

***Subsistence
Miscellaneous***



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
1011 E. TUDOR RD.
ANCHORAGE, ALASKA 99503



SUB

June 7, 1990

Senator Bettye M. Fahrenkamp
Chair, Senate Resources Committee
Room 125, Capitol
P.O. Box V
Juneau, AK 99811

Dear Ms. Fahrenkamp:

Enclosed you will find a copy of proposed regulations that were recently published in the Federal Register. The purpose of these regulations is to solicit input from resource users and the general public on how the Federal government should implement its subsistence responsibilities on public lands. These regulations are temporary and will expire on December 31, 1991.

I am forwarding these regulations to you because I am aware of your strong interest in subsistence. For your comments on these proposed regulations to be considered, they must be received by close of business, June 18, 1990. A greatly expanded public involvement opportunity will occur after July 1, 1990, in the course of developing permanent subsistence regulations. I look forward to receiving any comments you might have.

Sincerely,

Regional Director

Enclosure

[4310-55]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 40

Temporary Subsistence Management Regulations for Public Lands in Alaska

RIN 1018-AB43

AGENCY: Fish and Wildlife Service, Interior

ACTION: Proposed Temporary Rule

SUMMARY: This rule provides temporary regulations implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980. The Alaska Supreme Court recently ruled that the laws used by the State of Alaska to provide the subsistence priority required by Title VIII violated the Alaska Constitution. The court's action placed the State out of compliance with Title VIII. Since the State has been unable to return to compliance with Title VIII, the Federal government is required to take over the implementation of Title VIII on public lands.

DATE: Comments on this proposed rule must be received by [10 days from date of publication].

ADDRESSES: Comments and materials concerning the proposal should be sent to Bill Knauer at the U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Bill Knauer, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

SUPPLEMENTARY INFORMATION:

Background - Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires the Secretary of the Interior to implement a program to grant a preference in favor of subsistence uses of fish and wildlife resources on public lands unless the State of Alaska implements a subsistence program consistent with ANILCA's requirements. The State implemented such a program which the Department found to be

consistent with ANILCA. In December 1989, however, the Alaska Supreme Court ruled in McDowell v. State of Alaska that the rural preference in the State subsistence statute, which is required by ANILCA, violated the Alaska Constitution. The Court stayed the effect of the decision until July 1, 1990.

As a result of that decision, the Department of the Interior and the Department of Agriculture will be required to take over the implementation of Title VIII of ANILCA on public lands. The Fish and Wildlife Service (Service) was delegated the lead responsibility for developing a contingency plan to fulfill the Department of the Interior's subsistence responsibilities. Five departments within the Federal government will be responsible for management of lands covered by Title VIII. All departments are cooperatively developing these regulations.

These temporary rules will impact the subsistence uses of fish and wildlife resources on public lands in Alaska managed by the Fish and Wildlife Service, National Park Service, Bureau of Land Management, USDA-Forest Service, Bureau of Indian Affairs, Air Force, Army and various other Federal land managing agencies.

On April 13, 1990, a Notice of Intent to Propose Rules was published in the Federal Register (55 FR 13922) which solicited comments from the public. Because of the short time available, the opportunity for public review and comment was limited. The Service received 72 written comments in response to the Notice of Intent. All of these comments were taken into account in developing these proposed regulations.

Given the short time frame to prepare these proposed temporary regulations, and in anticipation of the State returning to compliance with Title VIII, the proposed temporary regulations will establish a Federal program that minimizes change to the state program consistent with meeting the Federal government's responsibilities under Title VIII. To do otherwise would be extremely disruptive to subsistence users and create unnecessary chaos if and when the State is able to bring its subsistence program back into compliance with ANILCA. The various seasons and bag limits in effect under the State system are being reviewed by the various Federal land managers. Due to the short time frame, they will be published in late June and will be effective on July 1, 1990. Major changes to existing State seasons and bag limits are not anticipated. Should the Federal government be required to retain management responsibility beyond this year, changes to the seasons and bag limits will be considered according to the procedures set forth in section 40.16 of the regulations.

These temporary regulations will remain in place until December 31, 1991, or until the State brings its subsistence program back into compliance with ANILCA, whichever comes first. The

development of permanent regulations, which is expected to start in 1990, will involve extensive public interaction and comment throughout the regulations development process, and will be completed by December 31, 1991.

The following discussion addresses specific issues or sections of the proposed temporary regulations which may be particularly confusing, controversial, require additional explanation, or elaboration of intent.

The Federal Government intends to minimize disruption to traditional State regulation and management of fish and wildlife. A high level of coordination and cooperation between the State and Federal regulatory programs is anticipated. These temporary regulations represent the provisions necessary for the Secretaries to fulfill their responsibilities for subsistence pursuant to ANILCA Title VIII, in the event conflicts arise between the State and Federal programs. If the coordination and cooperation between the State and Federal regulatory programs are realized, then many of the regulatory tools contained herein will need to be used seldom or not at all.

A memorandum of agreement (MOA) will be developed with the State. The MOA will address the mechanics of how the State and Federal programs will interact and coordinate. Through the MOA, the Federal program will minimize disruption to the State's regulatory program while still meeting the Secretary's responsibilities under Title VIII.

Section 40.3, Applicability and Scope - Subsistence uses are not authorized in Glacier Bay National Park, Katmai National Park, Kenai Fjords National Park, or those portions of Denali National Park originally reserved as Mt. McKinley National Park. Consequently, the prohibition of subsistence uses in those areas is clarified in Section 40.3 of these regulations.

Section 40.4(e), Customary Trade - Customary trade is included in ANILCA as part of the definition of subsistence uses. It is the intent of these regulations, and consistent with U.S. Senate Report No. 96-413, that customary trade not be used for the establishment of significant commercial enterprises under the guise of subsistence uses. The regulations allow for those types and volumes of customary trade of subsistence resources which existed prior to ANILCA passage.

Section 40.4(m), Public Lands - Title VIII applies to public lands, which are defined in Section 102(3) of ANILCA. Lands validly selected by the State or Native corporations formed under the Alaska Native Claims Settlement Act are excluded from the public lands definition in Section 102(3).

About 29.1 million acres will be conveyed to fill State and Native Corporation entitlements. However, nearly 60 million acres have been selected by the State and Native Corporations. This means approximately 31 million acres of land are over-selected and therefore will not be transferred, and will become "public lands" as defined in Section 102(3) after final adjudication. Although Section 906(c) of ANILCA states that Federal agencies manage both Native-selected and State-selected lands, until transferred, the Departments consider the Section 102(3) public lands definition to be controlling.

Navigable waters generally are not included within the definition of public lands. Navigable waters are those rivers, streams, lakes, or other waters which are used or susceptible of being used in their ordinary condition as highways for commerce over which trade and travel are or may be conducted in the customary modes of trade and travel on water.

Section 40.10, Federal Subsistence Board - Federal management of subsistence uses on the public lands requires an administrative structure be established to execute the Secretaries' subsistence responsibilities and perform functions specific to public lands. The proposed structure is the Federal Subsistence Board which will function similarly to the State Boards of Fisheries and Game. The Board will broadly execute the Secretaries' subsistence responsibilities which include: maintaining healthy fish and wildlife populations; setting Federal subsistence seasons and bag limits; making determinations of rural and non-rural communities and areas; determining customary and traditional subsistence uses; establishing and determining the membership of Regional Advisory Councils and local advisory committees specific to public lands.

Board membership is the regional or state directors of the Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs. These are the chief officials in Alaska of the primary Federal land managing agencies. These officials were chosen because of their public land management responsibilities. The Secretary of the Interior shall appoint the Chair of the Board with the concurrence of the Secretary of Agriculture.

Sections 40.11 and 40.12, Regional Advisory Councils and Local Advisory Committees - Councils and committees are required by ANILCA Section 805. The existing State advisory system has broad responsibilities for dealing with subsistence take and uses as well as sport and commercial take statewide. These regulations require the Secretary to review the existing resource regions, regional advisory councils and local advisory committees to determine their adequacy for fulfilling the functions outlined in Section 805. This will be accomplished by June 30, 1991. If the Secretary determines that the resource regions, regional advisory

councils or local advisory committees are inadequate to fulfill the functions outlined in Section 805, then these regulations empower the Board to establish a system of resource regions, councils, and committees, which are focused on subsistence uses specific to public lands. Public comment and participation will occur throughout the process of making the Secretary's determination and any subsequent actions as a result of the determination. Establishment of councils and committees by the Board will occur within 12 months after the date of the Secretary's determination if he determines that the existing regions, councils or committees are inadequate to fulfill the functions in Section 805.

Pending the Secretary's determination pursuant to this section, the Boards shall review the administrative record developed by the State Board of Fisheries and Game, regional advisory councils and local advisory committees and associated public comment as an temporary means of fulfilling Section 805 and gaining the input from the existing system of boards, councils and committees. Nothing in these regulations requires the Secretary to establish a separate system of councils and committees, though he may do so if necessary to fulfill his responsibilities pursuant to Title VIII.

Section 40.14, Relationship to State Procedures and Regulation -

As stated in 40.5 these regulations anticipate an interactive process between the State fish and game regulatory procedure and the Federal subsistence regulatory procedure. The State, because of its Constitution, cannot provide a preference for rural residents with customary and traditional use of fish and wildlife as required by ANILCA. The State can facilitate harvest by rural residents through various regulations dealing with means and methods of take and perhaps other mechanisms.

If State regulations allow rural residents the opportunity to obtain their customary and traditional take and uses of fish and wildlife resources, the Federal regulations may closely parallel State regulations. The Federal program anticipates a highly cooperative, interactive relationship with the State system. To the extent that cooperation exists the Federal program will be able to minimize change to traditional State regulation and management of fish and wildlife.

Section 40.15(b), Rural and Non-Rural Determinations - The definition of rural is, perhaps, the key element in these regulations. ANILCA did not define rural. The State has been wrestling with the rural definition since passage of ANILCA. The Ninth Circuit Court of Appeals ruled in 1988 that the rural definition in the State's 1986 subsistence law is not consistent with ANILCA and the common meaning of the term rural.

The legislative history of ANILCA provides some insight. Senate Report 96-413 identified Anchorage, Juneau, Fairbanks and Ketchikan as examples of non-rural communities in 1980 and Barrow, Kotzebue, Nome, Bethel and Dillingham as examples of rural communities. It further states that the rural nature of such communities is not a static condition and can change.

The Federal government recognizes that communities of the same size may vary greatly in character for a variety of reasons. Therefore, no single population number adequately serves as a dividing line between rural and non-rural communities. The process to determine rural is designed to incorporate the common meaning of rural and is based on two rebuttable presumptions.

A community or area of less than 2500 population is deemed rural unless it exhibits characteristics of a non-rural nature or area or is part of an urbanized area. The number 2500 was selected because it is the figure used by the U.S. Census Bureau to divide rural from non-rural. A community between 2500 and 7000 bears no presumption as to its rural or non-rural status. Some communities fall in this population range which clearly appear to have rural character.

Communities 7000 or greater in population are presumed to be non-rural. The 7000 population level was chosen because Ketchikan, the smallest of the non-rural communities mentioned in the Senate report, was approximately that size when ANILCA was passed and consequently is an indicator of Congressional intent. Communities in Alaska can approach and may rarely exceed a population level of 7000 and still be rural in character.

Determinations of rural or non-rural status by the State will be adopted by these regulations until December 31, 1990, unless superseded by determinations by the Federal Subsistence Board. This six month grace period will minimize confusion for existing subsistence users while allowing the Board to determine, according to the procedures in 40.16, the rural or non-rural status of communities or areas within the State.

The Board will publish the characteristics it will use in determining rural or non-rural status. Communities with populations between 2500 and 7000 will be reviewed before other communities.

This definition and process recognize that population alone is not the sole indicator of a rural or non-rural community. This flexibility is consistent with approaches other Federal agencies have used to determine if communities are rural. For example, the Department of Housing and Urban Development uses a population base of 2500 but employs indicators such "rural in character" or "has a serious lack of mortgage credit" to include larger communities in its definition of rural. Examples of indicators

which the Federal Subsistence Board may evaluate to decide if a community is rural or non-rural in character are: fish and game use; development and diversity of the economy, transportation, communication, infrastructure, and educational and cultural institutions.

Section 40.16, Regulation Adoption Process - The process for promulgating Federal subsistence regulations specific to public lands will be similar, and at least initially, will use much of the State regulatory process. The advisory structure contemplated by Title VIII of ANILCA will be an integral part of the Federal regulatory structure. As discussed previously in sections 40.11 and 40.12 regional advisory councils and local advisory committees may be established specific to Federal lands. Proposed regulations may originate from a variety of sources, but emphasis will be on the regional advisory council and local advisory committee system. While the public may comment and interact directly with the Board it is the intent of these regulations that most public comment and interaction with the regulatory process be channelled through the councils and committees. However, during the effective period of these temporary regulations the Federal regulatory process will rely substantially on the administrative record of the State system.

Subpart D - Subpart D extensively adopts existing State regulations dealing with methods and means of take. The State regulations are codified in Title 5 of the Alaska Administrative Code. In many cases the language is verbatim from the State regulations. In other cases minor modifications have been made to make the regulation specific to this Federal program or Federal lands. The regulations cite the State regulations from which they were derived. These temporary regulations attempt throughout to limit change to the State regulations to that necessary to fulfill the Secretaries' responsibilities pursuant to Title VIII.

Section 40.24(a) - Subsistence fishing for halibut is not authorized under the convention between the United States of America and Canada for the preservation of the halibut fishery of the northern Pacific Ocean and Bering Sea, as amended, or by National Marine Fisheries Service in 50 CFR 301, and is, therefore, prohibited.

Other Wild Renewable Resources - ANILCA Section 803 does not limit "subsistence uses" to fish and wildlife, but instead, uses the term "wild renewable resources." Vegetative resources and even water are included in this term. ANILCA Section 805(d) allows the State of Alaska to regulate take of fish and wildlife for subsistence uses on public lands if in compliance with sections 803, 804 and 805, but does not include other renewable resources.

Federal agencies have managed these other resources through various policies and regulations. Some agencies, like NPS, BLM, and the USDA-Forest Service, have adopted subsistence wood harvest policies which allow subsistence harvest under a permit system. Water was treated as a subsistence resource in BLM's Central Yukon Resource Management Plan/EIS. Because of past management and the desire to avoid confusion, wherever possible, regulation of the use of other wild renewable resources will be left to the individual land managing agency. The various Federal land managing agencies will continue to follow existing regulations with respect to non-fish and wildlife resources. See, for example, 36 CFR 13.49.

Access - Section 811 of ANILCA addresses "Access" for subsistence as follows:

(a) The Secretary shall ensure that rural residents engaged in subsistence uses shall have reasonable access to subsistence resources on the public lands.

(b) Notwithstanding any other provision of this Act or other law, the Secretary shall permit on the public lands appropriate use for subsistence purposes of snowmobiles, motorboats, and other means of surface transportation traditionally employed for such purposes by local residents, subject to reasonable regulation."

Generally, access by foot, snow machine, aircraft, and boat is allowed on public lands, but the use of all-terrain vehicles is on a site-specific basis. In National Parks and Park Monuments only, "...subsistence uses without use of aircraft as a means of access..." is allowed (46 FR 31849, June 17, 1981). The Park Service currently provides for "certain exceptions" which are managed under special permits issued by park superintendents for unusual circumstances, such as matters involving safety.

The NPS prohibition on the use of aircraft for subsistence in national parks or park monuments is consistent with the position taken in the FEDERAL REGISTER notice published on June 17, 1981 (46 FR 31836). It provides for exceptions to the aircraft prohibition in individual hardship situations (46 FR 31841). A local rural resident or community who believes they qualify under the hardship criteria at 36 CFR 13.45(b)(2) may apply for a permit as provided at 36 CFR 13.51. Nothing in these rules is intended to alter the existing NPS regulations on aircraft use for subsistence.

Decisions and regulations concerning access are the responsibility of the respective Federal land manager. Correspondingly, information on access is available from the Federal agencies for the lands they manage. Appeals on access

rulings are handled according to the appeal procedures of the agency in question.

Healthy Fish and Wildlife Populations - The term healthy populations of fish and wildlife appears in Title VIII as the standard against which subsistence use is to be regulated, and fish and wildlife are to be managed. The State uses the concept of sustained yield for its fish and wildlife regulatory program. Since the term healthy fish and wildlife populations appears in ANILCA, it is used instead of the term sustained yield, when identifying the standard for managing fish and wildlife under this regulatory program, although the terms in practice are frequently similar. National Parks and Park Monuments are managed according to the more restrictive natural and healthy populations standard.

Permanent Regulations - These temporary regulations automatically expire on December 31, 1991. Consequently, the Federal government will begin development of permanent regulations shortly after the temporary regulations take effect, if the State appears to be unable to resume subsistence management on public lands in 1990. Public comment will be solicited. Public meetings will also be held in the affected areas to solicit comments. The Federal government will then revise the proposed regulations in response to public comments and agency and legislative mandates and publish them as final regulations. Once implemented, the permanent regulations would remain in effect until the State brings its subsistence program back into compliance with ANILCA.

Conformance with Statutory and Regulatory Authorities - The impact of these regulations on subsistence uses has been evaluated as required by Section 810 of ANILCA. Subsistence use and access is expected to differ little from that previously allowed under State management. If change occurs it is expected to be beneficial to subsistence users. The regulations are consistent with the purposes and intent of Section 810 and will result in no significant restrictions on subsistence activities.

Properly regulated and managed subsistence use is consistent with the purposes for which the various public lands in Alaska were established.

National Environmental Policy Act Compliance: The Federal assumption of subsistence management would generally maintain the status quo from the user's perspective. Responsibility and on the ground implementation would shift from State to Federal officials. Changes in environmental effects would be negligible. Therefore, the implementation of regulations relative to Federal assumption of subsistence management on public lands is determined to be a categorical exclusion as detailed in the USDI Departmental Manual (516 DM 6, Appendix 1).

Paperwork Reduction Act - The collections of information contained in this rule are being submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3501 et seq. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Economic Effects - Executive Order 12291, "Federal Regulation," of February 19, 1981, requires the preparation of regulatory impact analysis for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions.

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of Executive Order 12291, and certifies that it will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities. The number of small entities affected is unknown, but the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue pre-existing uses of public lands indicates that they will not be significant.

These regulations do not meet the threshold criteria of "Federalism Effects" as set forth in Executive Order 12612. Title VIII of ANILCA requires the Secretary to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain Federal lands. Likewise, these regulations have no significant takings implication relating to any property rights as outlined by Executive Order 12630.

William Knauer, Refuges and Wildlife, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska, is the primary author of this proposed rulemaking document.

LIST OF SUBJECTS

Administrative Practice and Procedure, Alaska Fish, Public Lands, Reporting and Recordkeeping Requirements and Wildlife.

50 CFR Part 40

For the reasons set out in the preamble, Subchapter C of Title 50 of the Code of Federal Regulations is proposed to be amended as shown below:

50 CFR Subchapter C [Amend]

Amend Subchapter C by adding the following new Part 40:

PART 40 - SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

Subpart A - General Provisions

§40.1 Purpose

§40.2 Authority

§40.3 Applicability and Scope

§40.4 Definitions

§40.5 Federal Subsistence Policy, General

Subpart B - Program Structure

§40.10 Federal Subsistence Board

§40.11 Regional Advisory Councils

§40.12 Local Advisory Committees

§40.13 Board/Agency Relationships

§40.14 Relationship to State Procedures and Regulations

§40.15 Board Determinations

§40.16 Regulation Adoption Process

§40.17 Closures

§40.18 Appeals

Subpart C - General Requirements

§40.20 Subsistence Use Qualifications

§40.21 Licenses, Permits, Harvest Tickets, Tags, and Fees

§40.22 Penalties

Subpart D - Subsistence Hunting, Trapping, and Fishing

§40.23 Subsistence Hunting and Trapping

§40.24 Subsistence Fishing

§40.25 [Reserved]

§40.26 Subsistence Shellfish

Authority: 16 U.S.C. 3101 et seq.; 668dd et seq; 3; 551; 472; 18 U.S.C. 7; 3559; 3571; 43 U.S.C. 1733.

Subpart A - General Provisions

§ 40.1 Purpose

The regulations in this Part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ 40.2 Authority.

These regulations are issued pursuant to the Secretary of the Interior and of Agriculture authority specified in § 814 of the Alaska National Interest Lands Conservation Act (94 Stat. 2371, Pub. L. 96-487).

§ 40.3 Applicability and scope.

The regulations of this Part 40 apply to subsistence taking and uses of fish and wildlife on all public lands in the State of Alaska, and do not supersede agency specific regulations. Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park originally reserved as Mt. McKinley National Park are closed to subsistence activities.

§ 40.4 Definitions.

The following definitions apply to all regulations contained in this part unless otherwise provided in other regulations of this part.

(a) "Agency" means a subunit of a cabinet level Department such as U.S. Fish & Wildlife Service, USDA-Forest Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, Department of Army, Department of Air Force, National Marine Fisheries Service, etc.

(b) "ANILCA" means the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, 94 Stat. 2371, as amended.

(c) "Barter" means the exchange of fish or wildlife or their parts taken for subsistence uses: for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

(d) "Board" means the Federal Subsistence Board as described in § 40.10 of this part.

(e) "Council" means the Regional Subsistence Advisory Councils as described in § 40.11.

(f) "Customary trade" means types and volumes of trade in existence among rural resident subsistence users prior to the passage of ANILCA, and not of a level considered to be a significant commercial enterprise.

(g) "Customary and traditional use" means a consistent pattern of, and reliance for subsistence purposes

upon fish and wildlife and other wild renewable resources near or reasonably accessible from the users' place of residence. Customary and traditional use determinations are community or geographic area based, except that outside established subsistence resident zones in certain National Parks or Park Monuments determinations may be specific to individuals.

(h) "Federal lands" means lands the title to which is in the United States.

(i) "Family" means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

(j) "Fish and wildlife" means any member of the animal kingdom, including without limitation any mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or part thereof.

(k) "Local resident" means a rural resident with subsistence use in a specific geographic area.

(l) "Person" means an individual and does not include a corporation, company, partnership, firm, association, organization, business trust or society.

(m) "Public lands" means lands situated in Alaska which are Federal lands, except-

(1) land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(2) land selections of a Native Corporation made under the Alaska Native Claims Settlement Act which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(3) lands referred to in section 19(b) of the Alaska Native Claims Settlement Act.

(n) "Regulatory year" means July 1 through June 30.

(o) "Resident" means any person who has their primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose. Individuals are not required to occupy a home twelve months per year to be considered resident.

(p) "Rural" means any area of Alaska determined by the Board to qualify as such under the process described in § 40.15 of this part.

(q) "Secretary" means the Secretary of the Interior, except that in reference to matters related to the National Forest System, such term means the Secretary of Agriculture.

(r) "State" means the State of Alaska.

(s) "Subsistence uses" means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal family consumption; and for customary trade.

(t) "Take or taking" as used with respect to fish and wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

§40.5 Federal Subsistence Policy, General

The Secretary under Title VIII of ANILCA must accord a preference to subsistence uses of fish and wildlife on public lands. It is the policy of the Department to minimize conflict between resource uses on public and non-public lands. The Board will consider the recommendations of the State regional councils and local advisory committees, public input and comment, and actions of the State Boards of Fisheries and Game, as reflected in the administrative record, as a basis for decisions related to subsistence. The Board will give full consideration to state regulatory measures for fish and game uses and, where appropriate, adopt such measures, including state seasons and bag limits. However, the Secretary reserves the discretion, as embodied in these regulations, to prescribe different regulatory measures on public lands to protect subsistence uses consistent with Section 804 of ANILCA.

Subpart B - Program Structure

§ 40.10 Federal Subsistence Board

(a) Subsistence taking and uses of fish and wildlife on public lands shall be administered by a Federal Subsistence Board.

(b) **Membership**

(1) The Board shall consist of five members. The members are: Alaska Regional Director, Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA-Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) The Chair of the Board shall be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture.

(c) **Powers and Duties**

(1) Meetings shall occur at least annually, and at such other times as deemed necessary by the Board. Meetings will normally occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of three members but no action may be taken unless three members are in agreement.

(3) The Board is empowered, to the extent necessary to implement Title VIII of ANILCA, to:

(i) promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) establish rules and procedures for the operation of the Board, the regional advisory councils and local advisory committees established pursuant to this part;

(iii) apply a subsistence priority, as necessary for rural Alaska residents on public lands;

(iv) assess the biological status of fish and wildlife populations used for subsistence on public lands;

(v) determine if a harvest from populations of fish and wildlife is consistent with the ANILCA requirement to maintain healthy fish and wildlife populations on public lands;

(vi) make rural and non-rural determinations;

(vii) determine which rural Alaska areas or communities have customary and traditional subsistence uses of fish and wildlife. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may extend to individual rural residents;

(viii) review and respond to proposals by regional advisory councils for regulation, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(ix) close public lands to the taking of fish and wildlife authorized by State fish and game laws and regulations which may adversely affect subsistence taking and uses on those lands;

(x) prioritize subsistence taking of fish and wildlife among users when necessary to maintain healthy fish and wildlife populations based on application of the following criteria:

(A) Customary and direct dependence upon the populations as the mainstay of livelihood;

(B) Local residency; and

(C) The availability of alternative resources.

(xi) restrict or eliminate harvest of fish and wildlife by subsistence users if necessary to maintain healthy fish and wildlife populations, or for reasons of public safety, or administration;

(xii) establish at least six geographic subsistence resource regions;

(xiii) establish a regional advisory council in each subsistence resource region and appoint its members pursuant to the Federal Advisory Committee Act;

(xiv) establish local advisory committees within the subsistence resource regions as necessary and appoint their members pursuant to the Federal Advisory Committee Act.

(xv) such other duties as are necessary to implement the Secretary's responsibilities under Title VIII of ANILCA.

(4) The Board shall consider the reports and recommendations of the Councils concerning the subsistence take of fish and wildlife on the public lands within their respective regions. The Board may choose not to follow any recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision.

(5) The Board will establish a Staff Committee composed of personnel from the U.S. Fish and Wildlife Service, National Park Service, USDA-Forest Service, Bureau of Land Management, and Bureau of Indian Affairs for administrative assistance. Personnel from other Federal and State agencies will be invited to participate on the Staff Committee as appropriate. The Staff Committee's functions will include, but not be limited to:

(i) making recommendations concerning the biological status of fish and wildlife populations;

(ii) making recommendations on which communities or areas are "rural" and which have demonstrated "customary and traditional uses"; and

(iii) compiling records of subsistence harvest of fish and wildlife resources.

(6) Additional committees may be formed as necessary to assist the Board.

(7) The Board may review and revise or rescind its actions.

(8) The Fish and Wildlife Service shall provide appropriate administrative support for the Board.

§ 40.11 Regional Advisory Councils

(a) The Secretary shall during the effective period of these regulations review and determine the adequacy, for the purposes of the Secretary's responsibilities under Title VIII of ANILCA, the existing State:

(1) subsistence resource region;

(2) regional advisory councils; and

(3) local advisory committees.

(b) If the Secretary determines pursuant to Section 40.11(a) that the subsistence resource regions, regional advisory councils or local advisory committees are inadequate to fulfill the functions described in Section 805 of ANILCA, he shall establish

subsistence resources region, regional advisory councils or local advisory committees in accordance with Section 40.11 and 40.12.

(c) Pending the review and determination required by Section 40.11(a) the Federal Subsistence Board shall review the proposals, actions, and associated public comments contained in the administrative record produced by the existing State Board of Fisheries and Game, Regional Advisory Councils, and local advisory committees. This review shall be an interim measure to gain the public input described in Section 805 of ANILCA.

(d) The Board shall establish a Regional Advisory Council for each subsistence resource region within 12 months from the date of the Secretary's determination pursuant to Section 40.11(a), if the Secretary determines existing State Regional Advisory Councils are inadequate to meet the requirements of Section 805 of ANILCA. The Councils will provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Councils will provide for public participation in the regulatory process.

(e) Establishment of Councils-Membership

(1) The number of members of each council shall be established by the Board, and shall be an odd number. A Council member must be a resident of the region in which he/she is appointed and be knowledgeable about the region and subsistence uses therein. The Board shall solicit nominations from the public. Appointments to the Councils are made by the Board.

(2) Council members shall serve 3 year terms and may be reappointed. Initial members shall have staggered terms.

(3) The Chair of the Council shall be elected by the Council for a one year term and may be reelected.

(f) Powers and Duties

(1) The Councils are empowered to:

(i) hold public meetings on fish and wildlife subsistence matters;

(ii) elect officers;

(iii) in consultation with the local advisory committees in its region; review, evaluate, and make recommendations to the Board on any existing or proposed regulation, policy, or management plan, or any other matter relating to the subsistence take of fish and wildlife within or affecting its region.

(2) The Councils shall:

(i) prepare and submit to the Board an annual report containing;

(A) an identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) an evaluation of current and anticipated subsistence needs for fish and wildlife populations within the region;

(C) a recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs; and

(D) recommendations concerning policies, standards, guidelines, and regulations to implement the strategy.

(ii) provide a forum for, and assist the local advisory committees in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife.

(iii) attempt to develop areas of compromise and reach a regional consensus if differences of opinion exist among the local advisory committees.

(iv) perform other duties specified by the Board.

(3) Each Council must comply with rules of operation established by the Board.

(g) The Fish and Wildlife Service shall provide appropriate financial, technical and administrative assistance to the Councils.

§ 40.12 Local Advisory Committees

(a) The Board shall establish local advisory committees as deemed necessary within each subsistence resource region, if the Secretary determines pursuant to Section 40.11(a) that the existing state local advisory committees are inadequate to fulfill the requirements of ANILCA Section 805. The committees will provide a local public forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife, may make recommendations to the councils concerning regulations, and will provide for public participation in the regulatory process to help adequately protect subsistence uses.

(b) Establishment and membership of committees

(1) Committees and their membership shall be recommended by the Regional Councils to the Board. The membership of each committee shall be an odd number. Members must be residents of the local area, and be knowledgeable about the area and subsistence uses. Nominations will be from the Councils. Authorizations of and appointments to the committees are made by the Board.

(2) Committee members shall serve 3 year terms and may be reappointed. Initial appointments shall have staggered terms.

(3) The Chair of the committee shall be elected by the committee for a one year term and may be reelected.

(4) When considering a request by a Council to create a committee, the Board will consider:

(i) whether existing representation is adequate, and

(ii) whether participation in the Board's decision making process would be enhanced meaningfully.

(c) Powers and Duties

(1) The committees are empowered to:

(i) elect officers;

(ii) provide a local forum for proposing regulations of subsistence taking and uses of fish and wildlife, habitat management, and assisting the Councils in obtaining the opinions and recommendations of rural residents interested in subsistence taking and uses of fish and wildlife matters;

(iii) develop regulatory proposals for submission to the Council;

(iv) evaluate regulatory proposals submitted to the committees and make recommendations to the Council and Board;

(v) advise the appropriate regional council regarding the conservation, development, and subsistence use of fish and wildlife resources;

(vi) work with the appropriate regional council to develop subsistence management plans and harvest strategy proposals; and

(vii) cooperate and consult with interested persons and organizations, including government agencies, to accomplish their charge,

(viii) perform other duties specified by the Board.

(2) Committees must comply with rules of operation established by the Board.

(d) The Fish and Wildlife Service shall provide appropriate financial, technical, and administrative assistance to the committees.

§ 40.13 Board/Agency Relationships

(a) General

(1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on conservation system units or other public lands, recognizing that the management policies applicable to some units may entail methods of resource and habitat management and protection different from methods appropriate for other units.

(2) The Board shall promulgate a single set of regulations for subsistence taking of fish and wildlife on public lands. An agency may submit proposed regulations to the Board for inclusion. The Board is the final administrative authority on the promulgation of regulations relating to the subsistence taking of fish and wildlife on public lands, unless the Secretary at his discretion chooses to exercise his review authority.

(3) Nothing in these regulations shall abrogate the authority of individual Federal agencies to promulgate regulations necessary for the proper management of lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes park and park monument Subsistence Resource Commissions. Nothing in these regulations affects the appointments, duties or authorities of those Commissions.

§ 40.14 Relationship to State Procedures and Regulations

(a) State of Alaska fish and wildlife regulations, other than subsistence regulations, apply to public lands unless the Board finds it necessary to promulgate regulations which supersede State regulations in order to ensure the opportunity for subsistence take of fish or wildlife on public lands.

(b) The Board may close public lands to hunting and fishing, or establish seasons and bag limits different from the State. Such regulations may be implemented through individual agency closure authority. Where applicable to all public lands such regulations will be promulgated by the Board. The Board may allow State closures to stand which serve to achieve the objectives of Title VIII of ANILCA.

§ 40.15 Board Determinations

(a) Healthy Fish and Wildlife Populations - Determinations of healthy populations of fish and wildlife shall be based upon the maintenance of fish and wildlife resources and their habitats in a condition which assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystems and minimizes the likelihood of irreversible or long term adverse effects upon such populations and species. Natural populations, for this section, shall include existing, nonindigenous populations. Such determinations shall also recognize that customary and traditional subsistence uses by local rural residents may be a natural part of such ecosystems. Habitat manipulation or control of other species for the purpose of maintaining subsistence uses is not authorized within National Park System Units.

(b) Rural Determinations - Not later than December 31, 1990, the Board shall determine the rural or non-rural status of all areas or communities within Alaska. Pending such determination each area or community will retain its rural or non-rural status pursuant to Alaska Administrative Code (5 AAC 99.014). In determining whether a particular area of Alaska is rural, the Board will use the procedures set forth in 40.16 and use the following guidelines:

(1) A community or area with a population of 2500 or less will be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is part of an urbanized area.

(2) Communities or areas with populations between 2500 and 7000 will be determined rural or non-rural before other areas or communities are reviewed. The characteristics identified pursuant to 40.15(b)(5) will be used to make these determinations.

(3) A community with a population of 7000 or more is presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor will be utilized in this process.

(5) Community or area characteristics will be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to: fish and wildlife use; and development and diversity of: the economy, transportation, communication links, community infrastructure, educational and cultural institutions, and government institutions.

(6) Communities or areas which are economically, socially and communally integrated will be considered in the aggregate.

(c) Customary and Traditional Determinations - In making determinations of whether subsistence uses are customary and traditional, the Board may examine but not be limited to the following factors which exemplify customary and traditional use:

(1) The length, consistency and pattern of use.

(2) The degree of past and current reliance upon particular subsistence uses near or reasonably accessible from the user's place of residence.

(3) Whether current consistent use patterns provide substantial economic, cultural, social, or nutritional elements of the subsistence users' lives, as related to the importance of such uses to subsistence users' lives in the past.

(4) How the methods and means of taking relate to efficiency and economy of effort and cost, as conditioned by local circumstances, and as related to past methods and means of taking.

(5) Whether the present means of handling, preparing, preserving, and storing fish or game have been traditionally used by past generations - without excluding consideration of recent technological advances where appropriate.

(6) The passage of knowledge of fishing and hunting skills, values, and lore from generation to generation.

(7) Distribution or sharing of hunting or fishing effort, or the products of that effort (by customary trade, barter, sharing, and gift-giving), among others according to custom and tradition.

§ 40.16 Regulation Adoption Process

(a) The public shall be provided opportunities to participate in and comment on proposed changes in the regulations. The regulation adoption process should reasonably coincide with the State of Alaska's annual process of establishing fish and game regulations.

(b) Early in the regulatory year the Board shall provide to the Councils and committees, once established, and public a schedule of the regulatory and amendment process.

(c) The committees and Councils must submit proposals to the Board in compliance with the schedule. Committee proposals

must be submitted through the Councils. Proposals, however, may originate from any source; but to receive full consideration, must meet the published schedule. Proposals originating from individuals other than the Board, Council or committee will be referred by the Board to the Councils for comments. Each Council and committee shall hold at least one public meeting per year in its region or area to solicit public comment on proposals. The publics' and Councils' comments shall be forwarded to the Board in accordance with the schedule.

(d) The Board, based on comments from the Councils and public, and on resource and resource use information, shall develop draft regulations, publish a notice of availability in the Federal Register, and provide other public notice necessary to obtain public participation. A comment period of no less than 30 days shall be provided. The Board shall hold at least one public meeting to obtain public comment on the proposed regulations.

(e) Following the comment period, the final regulations shall be published in the Federal Register and will become effective on the date of publication or such later date as may be determined by the Board.

§ 40.17 Closures

(a) The Board may make or direct temporary closures of subsistence taking on public lands, if necessary, for reason of public safety, administration, or to assure the continued viability of a particular fish or wildlife population. In so doing, the Board will consult with the State, and provide adequate notice and public hearing to the affected communities.

(b) In an emergency situation, the Board may direct immediate closure of public lands to any or all hunting or fishing, including subsistence take. The Board shall publish notice and reasons justifying the closure in the Federal Register and in newspapers of the area(s) affected. The closure shall be effective when made, may not exceed 60 days, and may not be extended unless it is determined, after notice and hearing, that such closure should be extended.

(c) Any closure, pursuant to Title VIII, exclusive of those made through the annual regulatory process, which does not apply to all public lands will be implemented through the regulations governing such closures by each agency which manages public land in Alaska. Public notification and involvement procedures of the involved agency(s) shall be followed.

(d) Based on emergency need for subsistence, the Board may extend or change seasons or increase bag limits. The Board may consider an emergency under this item only upon a petition from an affected rural resident or community. If such changes are granted they shall be for the minimum time period and bag limit necessary to meet the need and may be made only after a determination by the Board that the proposed change will not affect the maintenance of healthy fish and wildlife populations.

The decision of the Board shall be the final administrative action.

§ Section 40.18 Appeals

(a) Decisions of the Board are subject to requests for reconsideration.

(b) Any affected person may file a request for reconsideration.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within 45 days of the date on the notice of the written decision for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why a decision by the Board should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, mailing address, and daytime telephone number (if any);

(2) The decision for which reconsideration is requested and the date of that decision;

(3) A statement of how the requestor is adversely affected by the decision;

(4) A statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the decision changed.

(e) Stays

(1) A decision may be implemented while the Board is reconsidering that decision unless the Board grants a stay.

(2) If a stay is desired, it must accompany the request for reconsideration. The stay request must contain a description of the decision to be stayed, specific reasons why the stay should be granted including specific adverse effect(s) upon the requestor, harmful site-specific impacts or effects on resources, and how the cited effects and impacts would prevent a meaningful reconsideration of the decision.

(3) The Board must issue a written decision on a stay request within 10 calendar days of receiving a stay request.

(f) The Board shall make a final decision on a request for reconsideration within 45 days after receiving such a request. The decision of the Board is the final administrative remedy except as specified in Section 40.18(g). Further relief is only available through the courts.

(g) The Secretary, at his discretion, may review actions by the Board.

(h) Decisions by a Federal agency outside its role on the Board are subject to appeal under the appeal procedures of that agency.

Subpart C - General Requirements

§ 40.20 Subsistence use qualifications.

(a) The taking of fish and wildlife on public lands for subsistence uses as defined in § 40.4 is restricted to Alaska residents of rural areas or communities. Non-rural residents are not provided a preference for the taking of fish and wildlife on public lands.

(b) This section does not limit the authority of the Board, or individual Federal land management agencies, to further restrict the class of qualifying subsistence users in particular cases based upon specific authority in ANILCA or other Federal statutes.

§ 40.21 Licenses, permits, harvest tickets, tags, and fees.

(a) Persons engaged in subsistence activities related to the taking of fish or wildlife on public lands must possess State of Alaska licenses, permits, harvest tickets, and tags and must comply with reporting and validation requirements. The intent of these regulations is to maximize the use of the State license and permit system, consistent with the sound management of fish and wildlife and fulfillment of the Secretary's Title VIII responsibilities.

(b) In addition to any licenses or permits required by paragraph (a) of this section, persons engaged in subsistence activities on public lands must possess any Federal licenses or permits that may be required for such activities.

(c) Upon request of a State or Federal law enforcement officer, individuals must produce: licenses, permits, harvest tickets, tags, or other pertinent documents required by this Section; and, any apparatus designed to be, or capable of being used to harvest fish or wildlife.

§ 40.22 Penalties.

Any person convicted of violating any provision of 43 CFR Part 40 may be punished by a fine not to exceed \$5,000 or imprisonment not to exceed six months or both in accordance with the penalty provisions prescribed by the applicable listed authorities of Part 40.

Subpart D - Subsistence hunting, trapping, and fishing

Subpart D closely follows existing State Fish and Game regulations which are codified in Title 5 of the Alaska Administrative Code. In many cases the language is identical to state regulation or modified so it applies only to this Federal program on public lands. The regulations note particular State provisions from which they were derived.

§ 40.23 - Subsistence Hunting and Trapping

(a) Definitions - The following definitions shall apply to all regulations contained in this subpart (derived from 5 AAC 92.990):

- (1) "ADF&G" means Alaska Department of Fish and Game.
- (2) "Aircraft" means a fixed-wing machine or device that is used or intended to be used to carry persons or objects through the air, including airplanes and gliders.
- (3) "Airport" means an airport listed in the Federal Aviation Agency, Alaska Airman's Guide and chart supplement.
- (4) "Animal" means those species with a vertebral column (backbone).
- (5) "Bag limit" means the number of any one species permitted to be taken by any one person in the unit or portion of a unit in which the taking occurs; however, additional numbers of a species may be taken in another designated open unit or portion of a unit where a greater limit on that species is prescribed. In no case may the total or cumulative bag for one person or designated group exceed the limit set for the unit or portion of a unit in which the additional animals are taken. A subsistence bag limit and a general bag limit for the same species are not cumulative.
- (6) "Big game" means black bear, brown and grizzly bear, bison, caribou, deer, elk, mountain goat, moose, musk oxen, mountain or Dall sheep, wolf and wolverine.
- (7) "Bow" means long bow, recurve bow, or compound bow, but not crossbow.
- (8) "Broadhead" means an arrowhead with two or more steel cutting edges having minimum cutting diameter of not less than seven-eighths inch.
- (9) "Brow tine" means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.
- (10) "Bull moose" means any male moose.
- (11) "Closed season" means the time when wildlife may not be taken.
- (12) "Cub bear" means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.
- (13) "Dire emergency" means a situation in which a person:
 - (i) Is in a remote area;
 - (ii) Is involuntarily experiencing an absence of food required for sustenance;
 - (iii) Will be unable to perform the functions necessary for survival, leading to a high risk of death or serious and permanent health problems if wild game food is not immediately taken and consumed; and
 - (iv) Cannot expect to obtain alternative food sources in time to avoid the consequences described in (iii) of this sub paragraph.
- (14) "Drawing permit" means a permit issued in a limited number to people who are selected by means of a lottery

held for all people submitting valid applications for such persons, and who agree to abide by the conditions specified for each hunt.

(15) "Full curl horn" means the horn of a male mountain or Dall sheep, the tip of at least one of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken or that the sheep is at least eight (8) years of age as determined by horn growth annuli.

(16) "Fur animal" means coyote, arctic fox, red fox, lynx, raccoon, or red squirrel, except domestically raised fur animals; "fur animals" is a classification of animals subject to taking with a hunting license.

(17) "Furbearer" means beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, raccoon, red squirrel, flying squirrel, marmot, wolf or wolverine.

(18) "Highway" means the drivable surface of any constructed road.

(19) "Household" means that group of people domiciled in the same residence.

(20) "Hunting area for a species" means that portion of a game management unit where a subsistence season and a bag limit for that species are set.

(21) "Motorized vehicle" means a motor-driven land or water conveyance.

(22) "Open season" means the time when wildlife may be taken; each period prescribed as an open season includes the first and last days of the period prescribed.

(23) "Permit hunt" means a hunt for which permits are issued by drawing, registration or other means.

(24) "Poison" means any substance which is toxic or poisonous upon contact or ingestion.

(25) "Registration permit" means a hunting permit issued to a person who agrees to the conditions specified for each hunt; permits are issued in the order applications are received, and are issued:

(i) Beginning on a date announced and continuing throughout the open season, or until the season is closed by emergency order when a harvested quota is reached; or

(ii) Beginning on a date announced and continuing until a predetermined number of permits has been issued.

(26) "Sealing" means placing a mark or tag on a portion of an animal by an authorized representative of the ADF&G; "sealing" includes collecting and recording information concerning the conditions under which the animal was harvested and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

(27) "Seven-eights curl horn" means the horn of a mountain sheep, the tip of which has grown through seven-eights

of a circle (315 degrees), described by the outer surface of the horn, as viewed from the side, or with both horns broken.

(28) "Skin", "hide" and "pelt" are all the same thing, and mean any tanned or untanned external covering of an animal's body: skin, hide, or pelt of a bear shall mean the entire external covering with claws attached.

(29) "Small game" means all species of grouse, hares, rabbits, ptarmigan, waterfowl, cranes and Wilson or jacksnipe.

(30) "Tine" or antler point refers to any point on an antler whose length is at least one inch, and is greater in length than in width, measured in a straight line across the base.

(31) "Transport" means shipping, carrying, importing, exporting, or receiving or delivering for shipment, carriage or export.

(32) "Unclassified game" means all species of game not otherwise classified in the definitions.

(33) "Unit" means one of the 26 geographical areas listed under game management units in the ADF&G's codified hunting, trapping and guiding regulations and the Game Management Unit Map of Alaska.

(34) "Year" means calendar year unless another year is specified.

(b) Small game and unclassified game, fur animals, furbearers, big game, and waterfowl, snipe and cranes may be taken for substance by any method, unless prohibited below or by other Federal statute.

(1) The following methods of taking game are prohibited (derived from 5 AAC 92.080):

(i) by shooting from, on, or across a highway;
(ii) with the use of any poison;
(iii) knowingly, or with reason to know, with the use of a helicopter in any manner, including transportation to or from the field of any unprocessed game or parts of game, any hunter or hunting gear, or any equipment used in the pursuit or retrieval of game; this paragraph does not apply to transportation of a hunter, hunting gear, or game during an emergency rescue operation in a life-threatening situation;

(iv) unless otherwise provided in this chapter, from a mechanical vehicle, or from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased, except that a motor-driven boat may be used to take caribou in (State Game Management Unit) Unit 23;

(v) with the use of an aircraft, snowmachine, motor-driven boat, or other motorized vehicle for the purpose of driving, herding, or molesting game;

(vi) with the use or aid of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) with the aid of a pit, artificial light (except that coyotes may be taken in Units 6(B) and 6(C) with the aid of artificial lights), radio communication, artificial salt

lick, explosive, barbed arrow, bomb, smoke, chemical, or a conventional steel trap with a jaw spread over nine inches; however, the "conibear" style trap with a jaw spread of less than 11 inches may be used;

(viii) with a snare, except for taking unclassified game, furbearer, grouse, hare, or ptarmigan.

(ix) by intentionally feeding a bear, wolf, fox, or wolverine, or intentionally leaving human food or garbage in a manner that attracts these animals. This does not apply to bait used for trapping furbearers or hunting black bears consistent with following regulations.

(2) The following methods and means of taking big game for subsistence are prohibited in addition to the prohibitions in 4C.23(b)(1) (derived from 5 AAC 92.075 and 92.085):

(i) with the use of a firearm other than a shotgun, muzzle-loaded rifle without scope, or rifle or pistol using a center-firing cartridge, except that:

(A) in Unit 23, swimming caribou may be taken with a firearm using rimfire cartridges;

(B) the use of a muzzleloading rifle is prohibited for brown/black bear, moose, bison, musk ox and mountain goat unless such a firearm is .54 caliber or larger, or at least .45 caliber and a 250 grain or larger elongated slug is used;

(ii) with a crossbow in any area restricted to hunting by bow and arrow only;

(iii) with a longbow, recurve bow, or compound bow unless the bow is capable of casting a broadhead-tipped arrow at least 175 yards horizontally, the arrow is tipped with a broadhead, and arrow and broadhead together weigh at least one ounce (437.5 grains), and the broadhead is not barbed, and unless the hunter has successfully completed an ADF&G approved bowhunter education course and minimum shot placement qualification test and carries an endorsement to this on their license;

(iv) with the use of bait; except that black bears may be taken with the use of bait between April 15 and June 15, but only in Units 1 (except 1(C)), 2, 3, 5, 6, 7 (except Resurrection Creek and its drainages), 11, 13, and 15-17; the season shall be April 15 through June 30 in Units 12, 19-21, 24, and 25, and April 15 through May 31 in Units 14(A) and 14(B). In these units, baiting of black bears is subject to the following restrictions:

(A) only biodegradable materials may be used for bait; only the head, bones, viscera, or skin of legally harvested fish and game may be used for bait;

(B) no person may use bait within one-quarter mile of a publicly maintained road or trail;

(C) no person may use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground or developed recreational facility;

(D) a hunter using bait shall clearly mark the bait station with a sign that displays the hunter's hunting license number and ADF&G assigned number;

(E) a hunter using bait shall remove litter and equipment from the bait station site when hunting is completed;

(F) no person may give or receive remuneration for the use of a bait station, including barter or exchange of goods; however, this does not apply to licensed master or registered guides, or their assistant guides, who personally accompany the client at the bait station site;

(G) no person may have more than two bait stations established (bait present) at any one time;

(H) no person may establish a black bear bait station unless he or she first registers the site with ADF&G;

(v) with the aid or use of a dog, except that a dog may be used to hunt black bear by permit issued at the discretion of the ADF&G;

(vi) with the use of a trap or snare;

(vii) while a big game animal is swimming, except that a swimming caribou may be taken in Unit 23;

(viii) no person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence uses a big game animal in a National Preserve units until 3:00 a.m. following the day in which the flying occurred.

(ix) no person who has been airborne, except in regularly scheduled commercial jet aircraft flights, may take for subsistence purposes or assist in taking a big game animal until after 3:00 a.m. following the day in which the flying occurred; however, this paragraph does not apply to subsistence taking of deer, or to subsistence taking of wolves during August 10-March 31 in Units 9, 11, 12, 13 (excluding that portion of Unit 13(E) west of the Parks Highway), 17, 19, 20, 21, 24, 25(B), 25(C), and 25(D); additionally with respect to wolves:

(A) no person may take a wolf without first obtaining from ADF&G, a numbered registration permit and numbered, nontransferable locking tags;

(B) shotguns may not be used to take wolves;

(C) a person taking a wolf shall immediately affix one of the tags to the skin of the wolf until the skin is sealed according to ADF&G procedures;

(x) from a boat in Units 1--5.

(3) The following methods and means of taking fur animals for subsistence under a hunting license are prohibited, in addition to the prohibitions in 40.23(b)(1) (derived from 5 AAC 92.090):

(i) by using a dog, trap, snare, net, or fish trap;

(ii) by disturbing or destroying a den;

(iii) by having been airborne and using a firearm to take or assist in taking an arctic or red fox until after 3:00 a.m. on the day following the day in which the flying occurred.

(4) The following methods and means of taking furbearers for subsistence under a trapping license are prohibited, in addition to the prohibitions in 40.23(b)(1) (derived from 5 AAC 92.095):

(i) by disturbing or destroying a den, except that any muskrat pushup or feeding house may be disturbed in the course of trapping;

(ii) by disturbing or destroying any beaver house;

(iii) taking beaver by any means other than a steel trap or snare, except that a firearm may be used to take beaver in Unit 18 from April 1 through June 10, and in Units 8, 22, and 23 throughout the seasons established herein;

(iv) taking land otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same game management unit;

(v) using a dog, net, or fish trap (except a blackfish or fyke trap);

(vi) taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation or by landing within one mile of a beaver trap or set used by the person transported;

(vii) taking a wolf in Units 12 and 20(E) during March, April or October with a steel trap, or with a snare smaller than 3X;

(viii) having been airborne and using a firearm to take or assist in taking an arctic fox, red fox, wolf, or wolverine until after 3:00 a.m. on the day following the day in which the flying occurred; this paragraph does not apply to a trapper using a firearm to dispatch a fox, wolf, or wolverine caught in a trap or snare;

(ix) taking a red fox in Unit 15 by any means other than a steel trap or snare.

(5) The following methods and means of hunting waterfowl, snipe, and cranes for subsistence are prohibited, in addition to the prohibitions in 40.23(b)(1) (derived from 5 AAC 92.100):

(i) with a rifle or pistol, a shotgun larger than 10 gauge, or a shotgun not plugged to 3 shell capacity;

(ii) from a motor-driven boat unless the motor has been completely shut off and the boat's progress from the motor's power has ceased;

(iii) from sunset to one-half hour before sunrise.

(c) Possession and Transportation of Wildlife (derived from 5 AAC 92.130 and 92.140)

(1) Unless otherwise provided, no person may take a species of game in any unit or portion of a unit if that person's total statewide take of that species already equals or exceeds the bag limit for that species in that unit or portion of a unit in that regulatory year.

(2) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not separate and

distinct. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional animals of that species under any other bag limit specified for a State general season.

(3) The bag limit specified for a trapping season for a species and the bag limit set for a hunting season for the same species are separate and distinct. This means that a person who has taken a bag limit for a particular species under a trapping season may take additional animals under the bag limit specified for a hunting season or vice versa.

(4) A bag limit applies to a regulatory year unless another time period is specified in the bag limit.

(5) No person may possess, transport, or give, receive or barter game or parts of game that the person knows or should know were taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(d) Evidence of sex and identity (derived from 5 AAC 92.150)

(1) No person may possess or transport a mountain sheep unless both horns accompany the animal if the subsistence take is restricted to a single sex.

(2) If the subsistence taking of a big game animal, except sheep, is restricted to one sex, no person may possess or transport the carcass of an animal unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this section does not apply to the carcass of a big game animal that has been cut and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(3) If a moose bag limit includes an antler size or configuration restriction, no person may possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. A person possessing a set of antlers with less than the required number of brow tines on one antler shall leave the antlers naturally attached to the unbroken, uncut skull plate; however, this subsection does not apply to a moose carcass or its parts that have been cut and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(4) Until the hide has been sealed by a representative of the ADF&G, no person may possess or transport the hide of a brown bear taken in Unit 4 which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(e) A person who takes an animal that has been marked or tagged for scientific studies must, within a reasonable time, notify the ADF&G or an agency, if identified on the collar or marker, when and where the animal was killed. Any ear tag, collar, radio, tattoo, or other identification must be retained with the hide until it is sealed, if sealing is required, and in all cases any identification equipment must be returned to the

ADF&G or to an agency identified on such equipment (derived from 5 AAC 92.160).

(f) Sealing of Bear Skins and Skulls (derived from 5 AAC 92.165).

(1) As used in this section,

(i) "bear" means brown bears in all units, and black bears of all color phases taken in Units 1-7, 11-16, and 20;

(ii) "temporary sealing form" means a form available at ADF&G offices for providing information regarding date and location of bear kill, species of bear, name and address of the hunter, name of the guide, and other information requested by the ADF&G on the form;

(iii) "sealing certificate" means a form used by the ADF&G for recording information when sealing a bear.

(2) No person may possess, transport, or export from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of the ADF&G within 30 days after the taking, or a lesser time if requested by the ADF&G. The seal must remain on the skin until the tanning process has commenced. A brown bear taken in Units 8 or 12 may not be transported from that unit until it has been sealed. A brown bear taken in Unit 20(E) may not be transported from that unit, except to Tok, until it has been sealed.

(3) Except as provided in (c) of this section, a person who kills a bear must personally present the skin and the skull to an authorized representative of the ADF&G for sealing within 30 days after the taking, or a shorter time if requested by the ADF&G, and must sign the sealing certificate at the time of sealing.

(4) A person who takes a bear but is unable to present the skin and skull in person must complete and sign a temporary sealing form and ensure that the completed temporary sealing form, along with the bear skin and skull, are presented to an authorized representative of the ADF&G for sealing within 30 days after the taking.

(5) If a person kills a brown bear, while on a guided hunt or while hunting with a resident relative, the hunter, as well as the guide or resident relative who accompanied the hunter, shall sign the sealing certificate. If a temporary sealing form is used, the hunter, as well as the guide or resident relative, shall sign the temporary sealing form.

(6) A person who possesses a bear shall keep the skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin. The ADF&G may require that the skull of the bear be skinned and that the skin and skull not be frozen at the time of sealing.

(7) No person may falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G.

(g) Sealing of Martin, Lynx, Beaver, Otter, Wolf, and Wolverine (derived from 5 AAC 92.170).

(1) No person may possess, transport, or export from the state the untanned skin of a marten taken in Units 1--5, 7, and 15, or the untanned skin of a lynx, beaver, land otter, wolf, or wolverine, whether taken inside or outside the state, unless the ADF&G has sealed the skin. The seal must remain on the skin until the tanning process has commenced or the skin has been transported from the state; however, the seal may be removed from the skin of a marten taken in Units 1--5 when the skin has been prepared for shipment from the state.

(2) The sealing of marten, lynx, beaver, land otter, wolf, or wolverine must be accomplished as follows:

(i) Wolf (in Unit 15(A)) taken by hunting or trapping must be sealed on or before the 5th day after the date of taking;

(ii) Wolf (except in Unit 15(A)), wolverine, and lynx taken by hunting must be sealed on or before the 30th day after the date of taking;

(iii) Marten (Units 1--5, 7, and 15 only), wolf (except in Unit 15(A)), wolverine, lynx, beaver, and otter taken by trapping must be sealed on or before the 30th day after the close of the season in the unit where taken.

(3) The sealing periods described in 40.23(g)(2) of this section may be temporarily reduced by an authorized employee of the ADF&G.

(4) A person who takes a species listed in 40.23(g)(2) of this section must bring the skin for sealing to an authorized representative of the ADF&G and must complete a report on a form provided by the ADF&G.

(h) No person may use game as food for a dog or furbearer, or as bait, except for the following (derived from 5 AAC 92.210):

- (1) the hide, skin, viscera, head, or bones of game;
- (2) the skinned carcass of a furbearer or fur animal;
- (3) red squirrels and small game; however, the breast meat of small game birds may not be used as animal food or bait;
- (4) legally taken unclassified game.

(i) (1) The following definitions shall apply to this paragraph (derived from 5 AAC 92.220):

(i) "wild fowl" means species of wild bird for which seasons or bag limits have been established by State or Federal law.

(ii) "edible meat" means, in the case of big game animals, the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (knee), hindquarters as far as the distal joint of the tibia-fibula (stifle joint) and that portion of the animal between the front and hindquarters; in the case of wild fowl, the meat of the breast: however, "edible meat" of big game, wild fowl or fish does not include: meat of the head; meat that has been damaged and made inedible by the method of taking, bones, sinew and

incidental meat reasonably lost as a result of boning or a close trimming of the bones; or viscera.

(2) A person taking game for subsistence shall salvage the following parts for human use:

(i) the hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel and land otter, and the hide or meat of a beaver or muskrat;

(ii) the hide, skull and edible meat of a brown bear;

(iii) the hide, skull and edible meat of a black bear.

(3) A person who kills a big game animal or a species of wild fowl may not intentionally, knowingly, recklessly, or with criminal negligence fail to salvage for human consumption the edible meat of the animal or fowl.

(4) Failure to salvage or possess the edible meat may not be a violation if due to circumstances beyond the control of a person, including theft of the animal or fowl, unanticipated weather conditions or other acts of God, or unavoidable loss in the field to another wild animal.

(5) If a person is convicted of violating this section and in the course of that violation failed to salvage from a big game animal at least the hindquarters as far as the distal joint of the tibia-fibula (stifle joint), the court shall impose a sentence of imprisonment of not less than seven consecutive days and a fine of not less than \$2,500.

(6) It is unlawful for a person to possess the horns or antlers of a big game animal that was killed after the opening of the current or most recent lawful season for the animal unless the person also possesses the edible meat of the animal. However, this does not apply to the acquisition of the horns or antlers as a gift after the edible meat of the big game animal was salvaged, or the edible meat is no longer present due to personal consumption.

(j) Subsistence taking of fish or wildlife shall not be considered an emergency taking. Situations where emergency taking of wildlife are allowed are defined in 40.23(a)(13).

(k) (1) Nothing in this subpart prohibits a person from taking wildlife in defense of life or property if (derived from 5 AAC 92.410):

(i) The necessity for the taking is not brought about by harassment or provocation of the animal or an unreasonable invasion of the animal's habitat;

(ii) The necessity for the taking is not brought about by the improper disposal of garbage or a similar attractive nuisance; and

(iii) All other practicable means to protect life and property are exhausted before the animal is taken.

(2) Wildlife taken in defense of life or property is the property of the State and is not a subsistence taking. A person taking such wildlife is required to salvage immediately the meat, or, in the case of a black bear, wolf, wolverine, or coyote, the hide including claws and surrender it to the State immediately. In the case of brown or grizzly bear, the hide and skull must be salvaged and surrendered to the State immediately.

The person taking the wildlife must notify the ADF&G of the taking immediately and must submit a written report of the circumstances of the taking of wildlife in defense of life or property to the ADF&G within 15 days of the taking.

(i) As used in this section, "property" is limited to:

- (A) A dwelling, permanent or temporary.
 - (B) An aircraft, boat, automobile, or other means of conveyance;
 - (C) A domesticated animal.
 - (D) Other property of substantial value necessary for the livelihood or survival of the owner.
- Game taken by hunters is not "property" in the sense of this regulation.

(ii) [Reserved].

(l) Subsistence harvest of Endangered or Threatened species will conform to provisions of the Endangered Species Act, as amended, and its implementing regulations.

(n) Subsistence harvest of Marine Mammals will conform to the provisions of the Marine Mammal Protection Act, as amended, and its implementing regulations.

(o) Reserved

§ 40.24 Subsistence Fishing

(a) Regulations in this subsection apply to subsistence fishing for salmon, herring, pike, bottomfish, smelt, and other types of finfish or their parts except halibut, and aquatic plants only on public lands in Alaska (derived from 5 AAC 01.001).

(b) Aquatic plants and finfish other than salmon may be taken for subsistence purposes at any time on any public lands in the state of Alaska by any method unless restricted by the subsistence fishing regulations in this section. Salmon may be taken for subsistence purposes only as provided in this section (derived from 5 AAC 01.005).

(c) The following definitions shall apply to all regulations contained in sections 40.25 and 40.26 (derived from 5 AAC 39.105(d) and 39.975).

(1) "Abalone Iron" is a flat device used for taking abalone and which is more than one inch (24mm) in width and less than 24 inches (61 cm) in length and with all prying edges rounded and smooth.

(2) "Anchor" is a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor or being secured to another vessel or net that is anchored.

(3) "Bag Limit" means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

(4) "Crab" means the following species: Paralithodes camshatica (red king crab); Paralithodes platypus (blue king crab); Lithodes couesi; Lithodes aequispina (brown king crab); all species of the genus Chionoecetes (tanner or snow crab); Cancer magister (Dungeness crab).

(5) "Diving Gear" is any type of hard hat or skin diving equipment.

(6) "Dipnet" is a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

(7) "Drainage" means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

(8) "Fishing Site" means a structure or vessel used by an Alaska Commercial Fisheries Entry Commission permit holder for providing shelter in support of the operation of stationary net gear.

(9) "Fishwheel" is a fixed, rotating device for catching fish which is driven by river current or other means of power.

(10) "Freshwater of streams and rivers" means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

(11) "Fyke net" is a fixed, funneling (fyke) device used to entrap fish.

(12) "Gear" means any type of fishing apparatus.

(13) "Gill net" is a net primarily designed to catch fish by entanglement in the mesh and consisting of a single sheet of webbing hung between cork line and lead line, and fished from the surface of the water.

(14) "Drift gill net" is a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

(15) "Set gill net" is a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

(16) "Grappling hook" is a hooked device with flukes or claws and attached to a line and operated by hand.

(17) "Groundfish - Bottomfish" means any marine finfish except halibut, osmerids, herring and salmonids.

(18) "Hand troll gear" consists of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical or other assisting device or attachment.

(19) "Herring pound" is an enclosure used primarily to retain herring alive over extended periods of time.

(20) "Hung measure" means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

(21) "Hydraulic clam digger" is a device using water or a combination of air and water to remove clams from their environment.

(22) "Inclusive season dates" means whenever the doing of an act between certain dates or from one date to another is allowed or prohibited, the period of time thereby indicated includes both dates specified; the first date specified designates the first day of the period, and the second date specified designates the last day of the period.

(23) "Lead" is a length of net employed for guiding fish into a seine or set gill net.

(24) "Legal limit of fishing gear" means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district or section.

(25) "Long line" is a stationary buoyed or anchored line or a floating, free drifting line with lures or baited hooks attached.

(26) "Mechanical clam digger" is a mechanical device used or capable of being used for the taking of clams.

(27) "Mechanical jigging machine" is a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

(28) "Net gear site" means the in-water location of stationary net gear.

(29) "(to) Operate fishing gear" means the deployment of gear in the waters of Alaska, the removal of gear from the waters of Alaska, the removal of fish or shellfish from the gear during an open season or period, or possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirements.

(30) "Possession limit" means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried or otherwise preserved so as to be fit for human consumption after a 15-day period.

(31) "Power gurdy troll gear" consists of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy.

(32) "Pot" is a portable structure designed and constructed to capture and retain fish and shellfish alive in the water.

(33) "Purse seine" is a floating net designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

(34) "Hand purse seine" is a floating net designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

(35) "Beach seine" is a floating net designed to surround fish which is set from and hauled to the beach.

(36) "Ring net" is a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be non-rigid and collapsible so that when fishing it does not prohibit free movement of fish or shellfish across the top of the net.

(37) "Rockfish" means all species of the genus

Sebastes.

(38) "Salmon stream" means any stream used by salmon for spawning or for travelling to a spawning area.

(39) "Salmon stream terminus" means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

(40) "Scallop dredge" is a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

(41) "Seine vessel" means the largest vessel, as determined by keel length, used to operate a seine and the vessel from which the seine is set, and to which the seine is retrieved.

(42) "Shovel" is a hand-operated implement for digging clams or cockles.

(43) "Stretched measure" means the average length of a any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet after use, the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by the means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under the five-pound weight, except as otherwise provided.

(44) "Trawl" is a bag-shaped net towed through the water to capture fish or shellfish.

(45) "Beam trawl" is a trawl with a fixed net opening using a wood or metal beam.

(46) "Otter trawl" is a trawl with a net opening controlled by devices commonly called otter doors.

(47) "Pelagic trawl" is a trawl where the net, or the trawl doors or other trawl-spreading device, do not operate in contact with the seabed, and which does not have attached to it any protective device, such as chafing gear, rollers, or bobbins, that would make it suitable for fishing in contact with the seabed.

(d) Methods, Means, and General Restrictions

(1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional fish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this chapter, the following are legal types of gear for subsistence fishing (derived from 5 AAC 01.010):

(i) gear specified in definitions in subsection (a)(3).

(ii) jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and are drawn through the water by hand;

(iii) a spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and is operated by hand;

(iv) a lead which is a length of net employed for guiding fish into a seine or a length of net or fencing employed for guiding fish into a fishwheel, fyke net or dip net.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by the regulations in particular areas set forth in this section.

(4) It is prohibited to buy or sell subsistence-taken fish, their parts, or their eggs, unless otherwise specified in this section.

(5) Fishing for, taking or molesting any fish by any means, or for any purpose, is prohibited within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction.

(6) The use of explosives and chemicals is prohibited.

(7) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Kotzebue-Northern, Norton Sound-Port Clarence, Yukon, Kuskokwim and Bristol Bay areas.

(8) Each person subsistence fishing shall plainly and legibly inscribe his/her first initial, last name, and address on his/her fishwheel, or on a keg or buoy attached to gill nets and other unattended subsistence fishing gear.

(9) All pots used to take fish must contain an opening in the webbing of a side wall of the pot which has been laced, sewn or secured together by untreated cotton twine or other natural fiber no larger than 120 thread, which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one half of the tunnel eye opening perimeter.

(10) Persons licensed by the State of Alaska under Alaska Statutes to engage in a fisheries business may not receive for commercial purposes or barter or solicit to barter for subsistence taken salmon or their parts. Further restrictions on the bartering of subsistence taken salmon or their parts may be implemented by the Federal Subsistence Board if necessary.

(11) Gill net web must contain at least 30 filaments and all filaments must be of equal diameter. The web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter.

(12) Except as provided elsewhere in this regulation, the taking of rainbow trout and steelhead is prohibited.

(13) Fish taken for subsistence use or under subsistence fishing regulations may not be subsequently used as bait for commercial and sport fishing purposes.

(14) The use of live nonindigenous fish as bait is prohibited.

(e) Unlawful Possession of Subsistence Finfish - No person may possess, transport, give, receive or barter subsistence-

taken fish or their parts that the person knows or should know were taken in violation of Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 01.030).

§40.25 [Reserved]

§ 40.26 Subsistence Shellfish

(a) Regulations in this section apply to subsistence fishing on public lands for dungeness crab, king crab, tanner crab, shrimp, clams, abalone and other types of shellfish or their parts. The descriptions of legal types of gear and definitions in 40.25(a) are applicable to the regulations of this section (derived from 5 AAC 02.001).

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of this section and Section 40.25 (derived from 5 AAC 02.005).

(c) **METHODS, MEANS, AND GENERAL RESTRICTIONS**

(1) The bag limit specified herein for a subsistence season for a species and the state bag limit set for a state general season for the same species are not cumulative. This means that a person or designated group who has taken the bag limit for a particular species under a subsistence season specified herein may not after that, take any additional shellfish of that species under any other bag limit specified for a State general season.

(2) Unless otherwise provided in this section, the following are legal types of gear for subsistence fishing (derived from 5 AAC 02.010):

(i) gear specified in 40.25(a);

(ii) jigging gear which consists of a line or lines with lures or baited hooks which are operated during periods of ice cover from holes cut in the ice and which are drawn through the water by hand;

(iii) a spear which is a shaft with a sharp point or fork-like implement attached to one end, used to thrust through the water to impale or retrieve fish and which is operated by hand;

(iv) A lead which is a length of net employed for guiding fish into a seine or a length of net or fending employed for guiding fish into a fishwheel, fyke net, or dip net;

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified in this section.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Subsistence fishing by the use of a line attached to a rod or pole is prohibited except when fishing through the ice in the Bering Sea area.

(6) Each subsistence fisherman shall plainly and legibly inscribe his/her first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent Alaska Department of Fish and Game vessel license number.

(7) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(8) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(9) In addition to the marking requirements in (5) of this subsection, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(10) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in subsection 40.26(f).

(11) In the subsistence taking of shrimp in the Southeastern Alaska-Yakutat and Prince William Sound Areas, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Southeastern Alaska-Yakutat Area, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Subsistence Take by Commercial Vessels - No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered (derived from 5 AAC 02.025).

(e) Unlawful possession of Subsistence Shellfish - No person may possess, transport, give, receive or barter subsistence taken shellfish or their parts that the person knows or should know were taken in violation of a Federal or State statute or a regulation promulgated thereunder (derived from 5 AAC 02.030).

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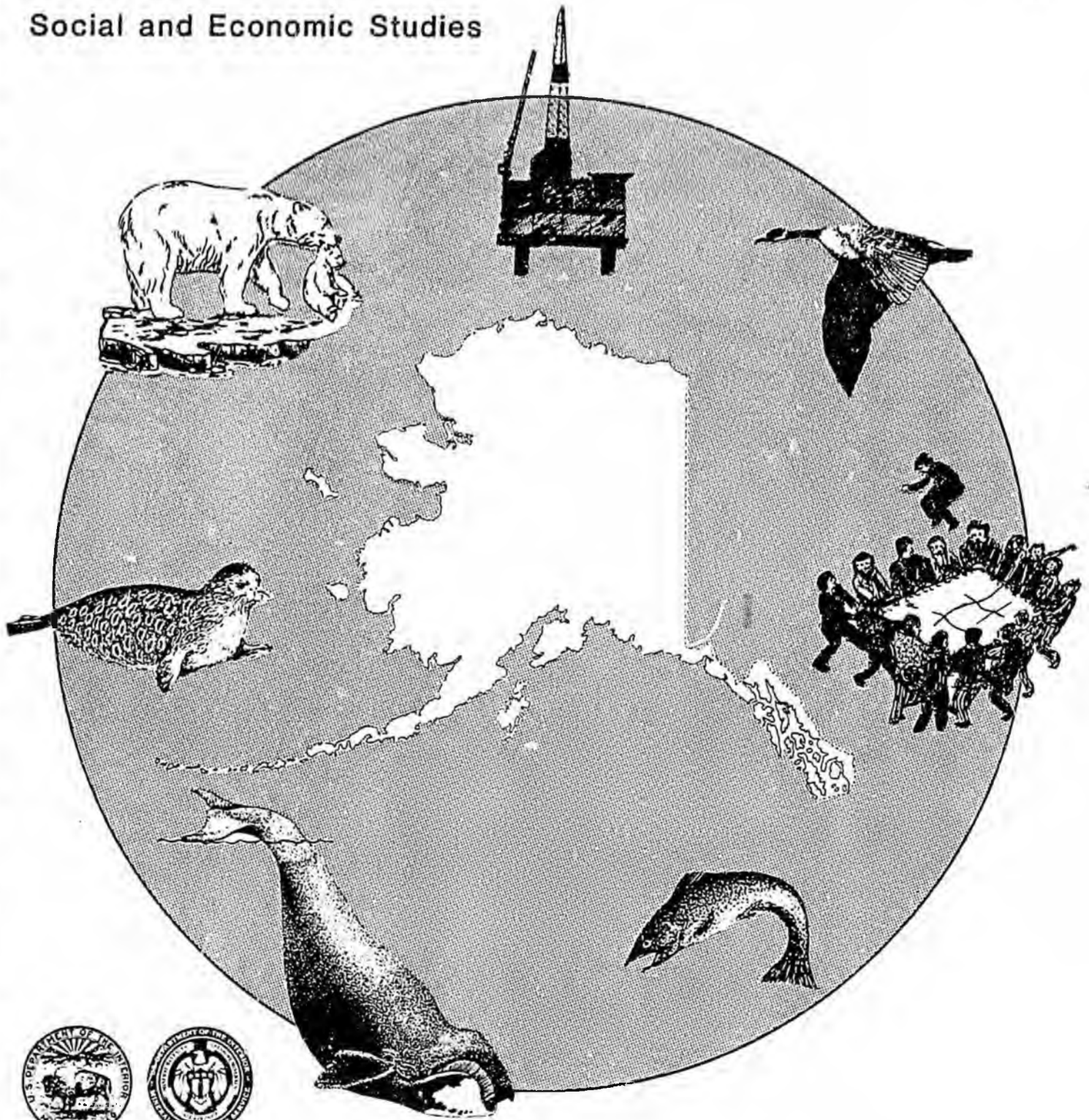

Acting Director, Fish and Wildlife Service

(sgd.) Bruce Blanchard

Subsistence Fisheries Alaskan Arctic, 1970-1986

OCS Study
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SUBSISTENCE FISHERIES AT COASTAL VILLAGES IN
THE ALASKAN ARCTIC, 1970-1986

PREPARED FOR

MINERALS MANAGEMENT SERVICE
ALASKA OUTER CONTINENTAL SHELF REGION
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ABSTRACT

Subsistence fisheries in the Alaskan Arctic provide an important food source for the coastal communities of Barrow, Point Lay, Wainwright, Atkasuk, Nuiqsut, and Kaktovik. The total annual harvest (villages combined) is roughly 210,000 lb of fish, which in terms of utilizable weight almost equals the villages' annual harvest of bowhead whales.

The fisheries concentrate on anadromous species (whitefish, char, salmon) although freshwater species (grayling) are also taken. The species caught at each village differ, as would be expected based on distribution patterns of fishes in the study area. The fisheries are fairly well-described in terms of timing and location but not harvest quantity. In some cases, the only available information about harvest quantity consists of a rough estimate made 15 years ago.



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INTRODUCTION

Fish historically have been a vital food source for the Inupiat of the Alaskan Arctic. In modern times, fishing continues to be an important activity despite the rapid cultural and economic changes brought about since 1970 by the discovery and development of the North Slope oil fields. Fully one third of the adult population in North Slope communities participated in fishing activities in 1977-78 (Fig. 1).

The period covered in this report, 1970-1986, represents a time of transition of cultural values and patterns of subsistence use. Documentation of subsistence fisheries has been sparse, however, with most available reports describing fishing only in general terms and often from a cultural perspective. There are few detailed accounts of actual quantities of fish harvested, and the information that is available is not generally known for two reasons: the data occur in widely scattered reports by government agencies and private firms, and people interested in subsistence information are often unaware that pertinent information may be "hidden" in the occasional scientific fish report.

The overall objective of the present report is therefore to assemble the available information and assess the current state of knowledge about modern subsistence fisheries at North Slope communities. The report focuses on the fish and fisheries themselves, i.e., what species are caught, how many, where and when. This focus specifically precludes an analysis of the cultural or economic significance of the fisheries--these topics are described by others (e.g., Nielson 1977, NSB 1979a, Kruse et al. 1981, Jacobson and Wentworth 1982, Braund and Burnham 1984, Galginaitis et al. 1984, Alaska Consultants et al. 1984, Stern 1985).

METHODS

The study area is the North Slope of Alaska, from Point Lay to the U.S.-Canada border on the Beaufort Sea (Fig. 2). Subsistence fisheries are examined at six coastal villages:

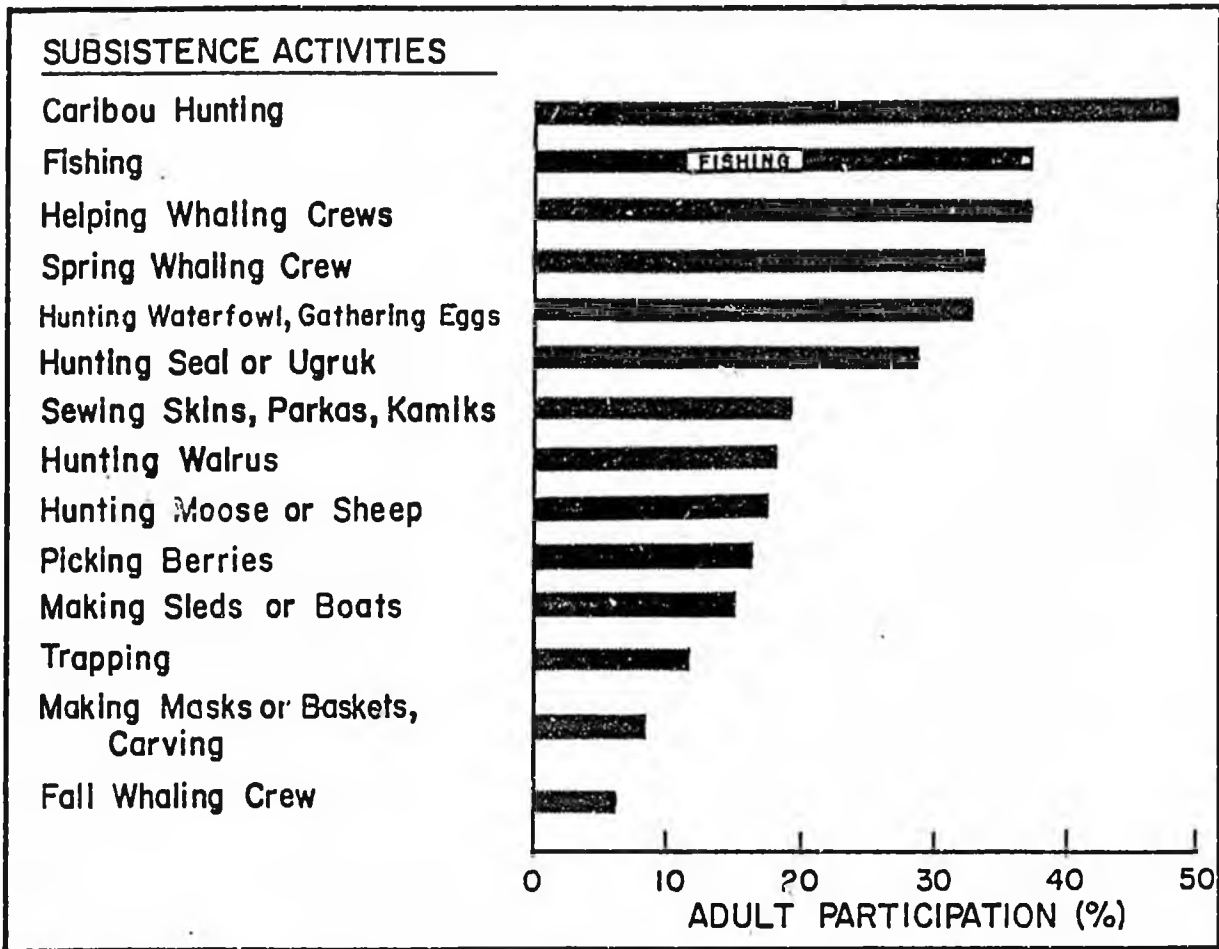


Figure 1. Proportion of adults from North Slope communities who participated in various subsistence activities in 1977-78. The sample size was 290 adults from the villages of Point Hope, Wainwright, Barrow, Nuiqsut, Kaktovik, and Anaktuvuk Pass. Redrawn from Kruse et al. 1981.

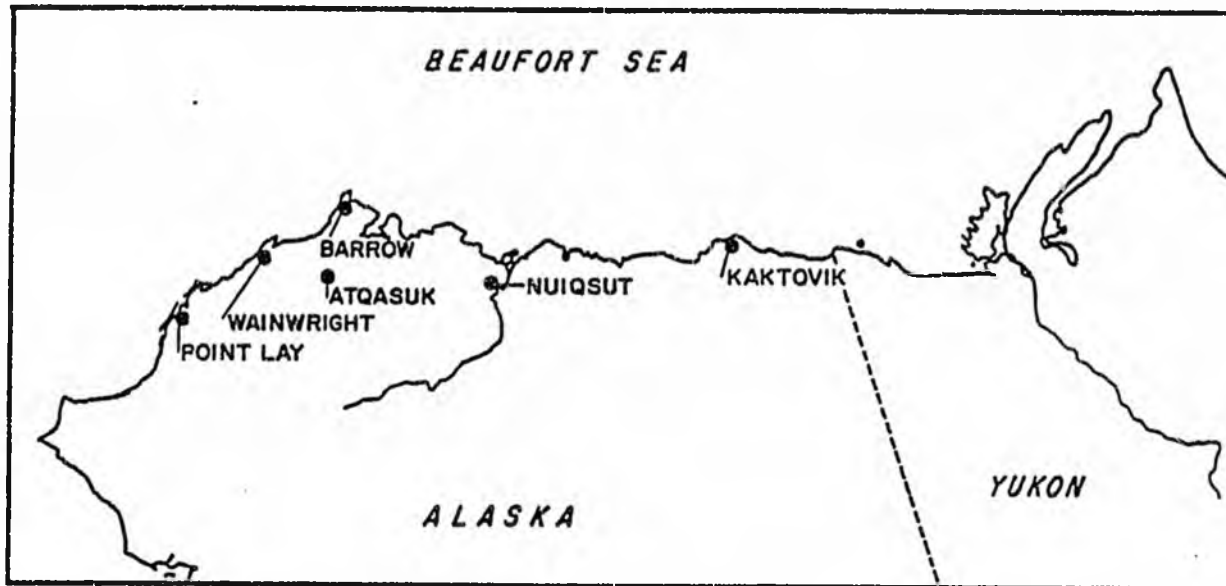


Figure 2. North Slope communities.

Point Lay	Atqasuk
Wainwright	Nuiqsut
Barrow	Kaktovik

This report is based on a literature review and on discussions with people familiar with fish research conducted in the study area (see Acknowledgements). The intent was to collect fisheries information, particularly to search for "hard data" describing actual quantities of fish harvested. Original data have therefore been emphasized. The literature search included many pre-1970 documents in addition to post-1970 reports (e.g., Murdock 1884, Bean 1887, Hewes 1947, MacGinitie 1955, Sonnefeld 1956, Willimovsky 1956, Milan 1958 and 1964, Spencer 1959, Foote 1965, Bane 1966, Hanson et al. 1966, Nelson 1966 and 1969, Andersen 1982). However, only one pre-1970 report contained the kinds of quantitative data useful for this report.

In this report, the term "subsistence fishery" is used in its broadest sense, i.e., the personal use of locally-caught fish for food. Some fish, however, are traded or sold to other villagers, but the degree to which this occurs is not known and therefore these fish are considered to be part of the subsistence catch.

This report concentrates on fishing areas of known and often traditional importance, but it is recognized that, in addition, people may catch fish for their immediate consumption wherever they travel or hunt, which may include the entire North Slope when the subsistence-use areas of all the villages are viewed in total (Fig. 3).

The standardized unit of fish harvest used in this report is the total weight of the catch. Weights originally expressed as "dressed weights" have been converted to total weight according to the conversion factors used by the authors. Differences between total and dressed weights (about 20%) are not particularly significant given the imprecise methods used to approximate annual harvests in all studies.

Population sizes of the North Slope communities were obtained from Kruse et al. (1981) and the Alaska Department of Community and Regional Affairs (FY 1986 Revenue Sharing Program).

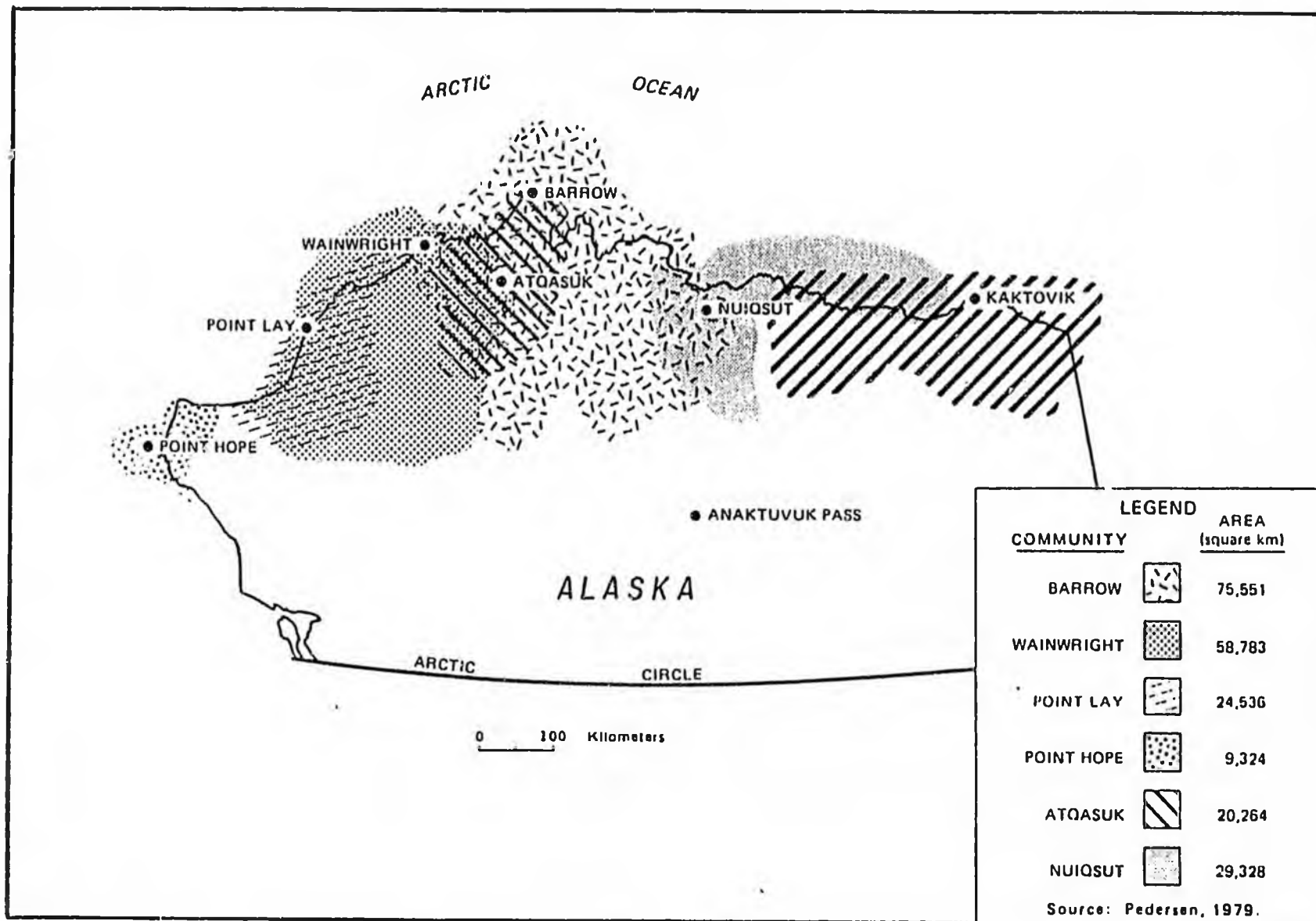


Figure 3. Subsistence-use areas for all resources used by each North Slope Village. Source: Pedersen 1979.

THE FISHES

Subsistence fishermen catch a variety of species in arctic waters (Table 1), but not all of these species are of equal value--some are discarded and others are not equally abundant throughout the study area. The principal species harvested thus differ among the villages (Table 2).

Two features of the environment influence fish distributions in the study area and thus determine the kinds of fishes that are available to the various fisheries (Craig 1984a,b):

1. Proximity to Bering Sea. The Chukchi Sea is a transition zone between the warmer, productive waters of the Bering Sea and the colder, less productive waters of the Beaufort Sea. Some southern species such as salmon and herring range northward into the northeastern Chukchi Sea but are scarce in the Beaufort Sea. Salmon are thus more common in subsistence harvests at Point Lay, Wainwright and Barrow than at villages along the Beaufort coast.
2. Locations of Anadromous Fish Streams. When anadromous fish enter the coastal waters of the study area, many do not range far from their natal rivers. Thus, the species composition and abundance of anadromous species in coastal waters generally reflect the proximity of the rivers from which the fish came. In this respect, the study area can be divided into three coastal regions with different fish species composition as illustrated in Figure 4.

First, streams in the Chukchi region (Point Hope to Barrow) are generally small and of marginal significance for the production of anadromous fishes. The relatively few anadromous fishes produced in this region (notably salmon) contribute to the subsistence fisheries at Point Lay, Wainwright, and Barrow.

Second, streams in the central part of the study area (Barrow to the Colville River) produce primarily

Table i. List of commonly caught fishes in the study area.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Inupiat Name¹</u>	<u>Weight (lb)²</u>
<u>Anadromous Species</u>			
Chum salmon	<u>Oncorhynchus keta</u>	iqalugruaq, iqaluruq	6.0-9.0
Pink salmon	<u>O. gorbuscha</u>	amaqtuq	2.0-3.1
Arctic char	<u>Salvelinus alpinus</u>	iqalukpik	0.9-4.0
Whitefish			
Broad whitefish	<u>Coregonus nasus</u>	aareakliq, aanaaliq	1.2-3.9
Humpback whitefish	<u>C. olupeiiformis</u>	pikuktuuq	1.4-2.3
Arctic cisco	<u>C. autumnalis</u>	qaaktaq, qaatag	0.8-2.0
Least cisco	<u>C. sardinella</u>	iqalusaaq	0.5-0.9
Bering cisco	<u>C. laurettae</u>	qaaktaq, tipuk	1.1-2.2
Rainbow smelt	<u>Osmerus mordax</u>	ilhuagniq	0.15-0.25
<u>Marine Species</u>			
Pacific herring	<u>Clupea harengus</u>	uqsruqtuq	0.3-0.4
Arctic cod (tomcod)	<u>Boreogadus saida</u>	iqalugaq, uugaq	0.05-0.13
Saffron cod (tomcod)	<u>Eleginus gracilis</u>	uugaq	0.06-0.31
Capelin	<u>Mallotus villosus</u>	panmaksraq, panmagriq	0.02-0.04
Fourhorn sculpin	<u>Myoxocephalus quadricornis</u>	kanayuy	
Arctic flounder	<u>Liopsetta glacialis</u>	nataagnaq, puyyaqiaq	
<u>Freshwater Species</u>			
Arctic grayling	<u>Thymallus arcticus</u>	sulukpaugaq	0.3-1.7
Lake trout	<u>Salvelinus namaycush</u>	igalukpak	2.7-14.4
Burbot (lingcod)	<u>Lota lota</u>	tittaaliq	2.0-10.0
Round whitefish	<u>Prosopium cylindraceum</u>	savigunaq, aanaaliq	0.5-0.9

¹Sources: Schneider et al. 1980, Nelson 1981, Jacobson and Wentworth 1982, Pedersen et al. 1985, Stern 1985, George and Nageak 1986.

²Typical whole weight of subsistence-caught fish.

Table 2. Primary species of fishes harvested at North Slope villages.

<u>Village</u>	<u>Primary Fish Species Harvested</u>							
	<u>Herring</u>	<u>Salmon</u>	<u>Rainbow smelt</u>	<u>White- fish</u>	<u>Least cisco</u>	<u>Arctic¹ cisco</u>	<u>Arctic char</u>	<u>Grayling</u>
Point Lay	+	+						+
Wainwright		+	+					+
Barrow		+		+	+	+		
Atkasuk				+	+			+
Nuiqsut				+	+	+	+	+
Kaktovik						+	+	

¹Arctic or Bering cisco.

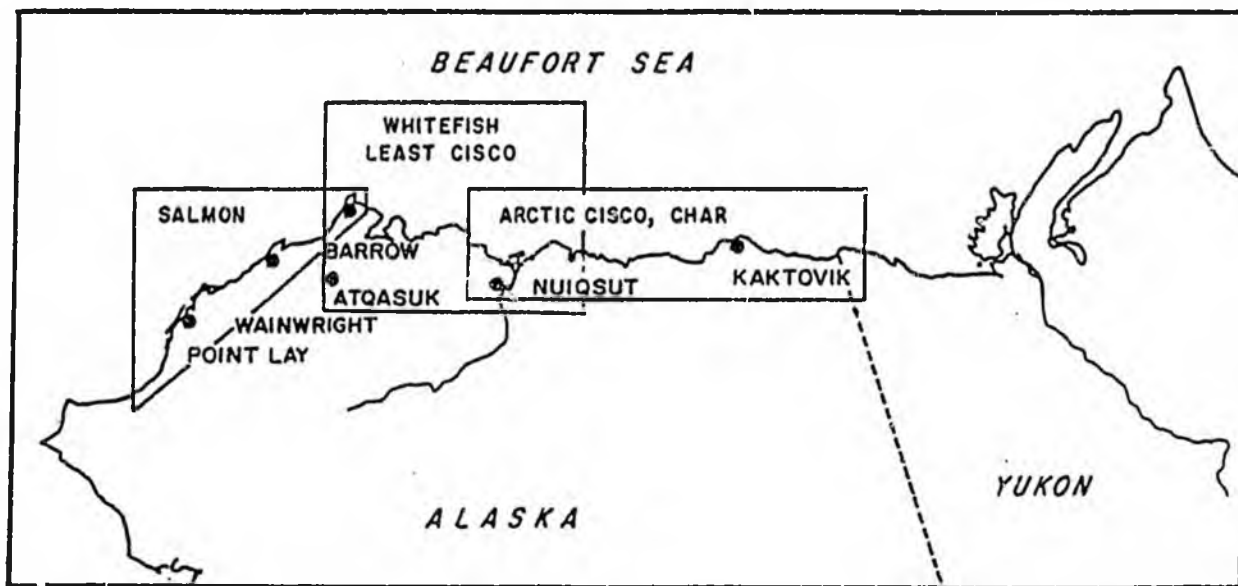


Figure 4. Principal anadromous fish species harvested by coastal region.

whitefishes and ciscoes which are prominent in the subsistence harvests at Barrow, Atqasuk, and Nuiqsut.

Third, streams in the eastern portion of the study area (Colville to the Mackenzie rivers) produce primarily arctic char. These char, together with migrant arctic cisco from the Mackenzie River, constitute most of the subsistence catch at Kaktovik.

Though fish populations are distributed generally in accordance with these patterns, individual fish may disperse farther along the coastline. For example, fish tagged in Simpson Lagoon (Fig. 5) and Prudhoe Bay have been recovered from Barrow to the Mackenzie River.

General distribution patterns of the commonly-harvested species are described below.

Anadromous Species

Anadromous species, whose life cycle includes both a freshwater and a marine phase, constitute by far the largest portion of subsistence harvests at North Slope villages. The principal anadromous species caught are salmon, arctic char, whitefishes, ciscoes, and rainbow smelt.

Salmon

Pacific salmon, though not very abundant in arctic waters (reviewed by Craig and Haldorson 1985), are most common along the coastline of the northeastern Chukchi Sea (Fig. 6). Only pink (humpback) and chum (dog) salmon occur with any regularity in the study area. Pink salmon are the most common species, accounting for 85% of all salmon caught in biological surveys from 1970 to 1984, followed by chum salmon (13%). "Silver salmon" are also caught, but this is a generic term which may be applied by subsistence fishermen to sea-run salmon of any species.

Small runs of pink salmon occur in several streams between Point Hope and Barrow, and perhaps in the Colville River. Their abundance in the study area is highly variable both seasonally and annually. Pink salmon display a cyclical pattern of abundance--they are much more abundant in

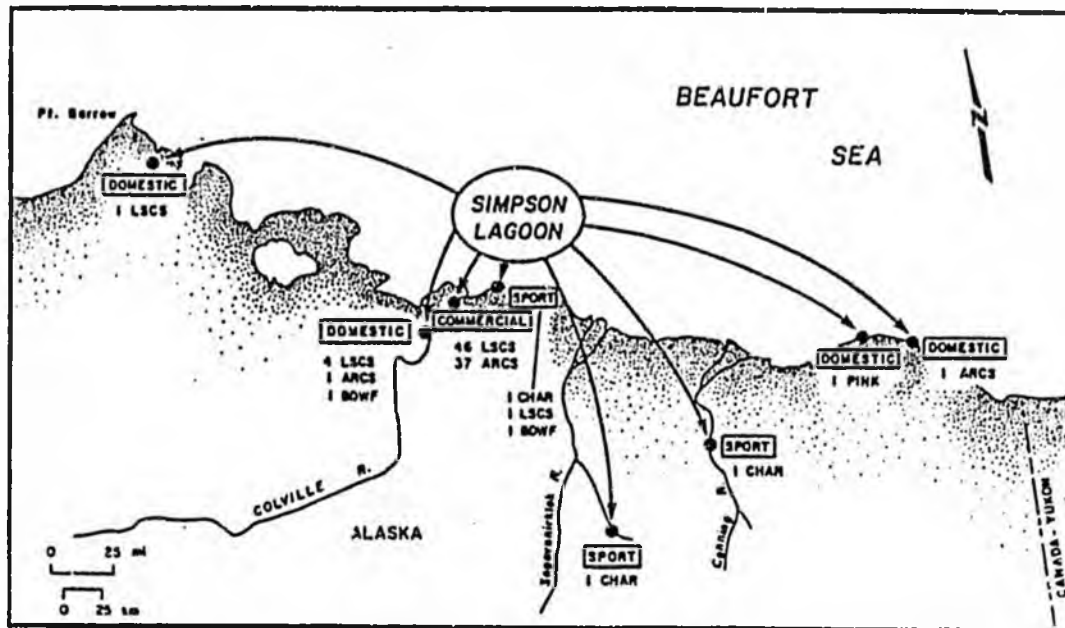


Figure 5. Fish tagged in Simpson Lagoon and recaptured in commercial, domestic or sport fisheries. Specific mark and recapture data are listed in Appendix 1. Abbreviations: ARCS (Arctic cisco), LSCS (least cisco), CHAR (Arctic char), BDWF (broad whitefish), PINK (pink salmon). Source: Craig and Haldorson 1981.

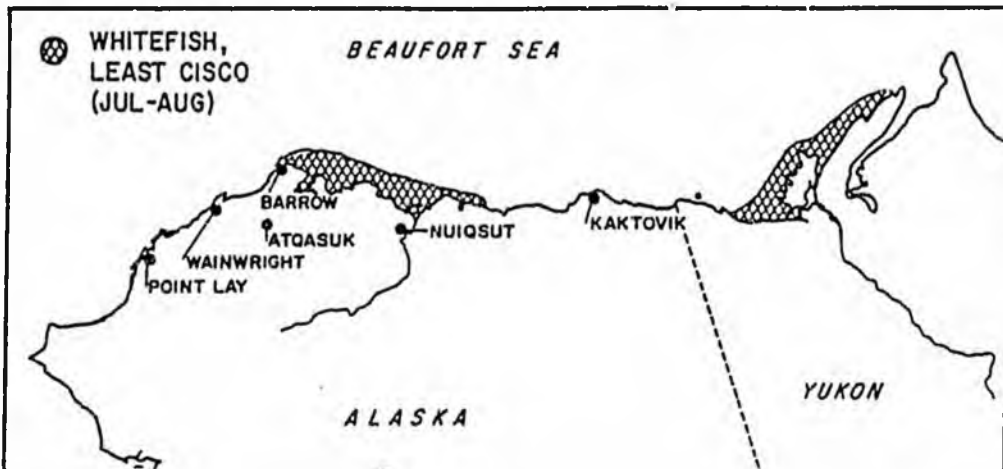
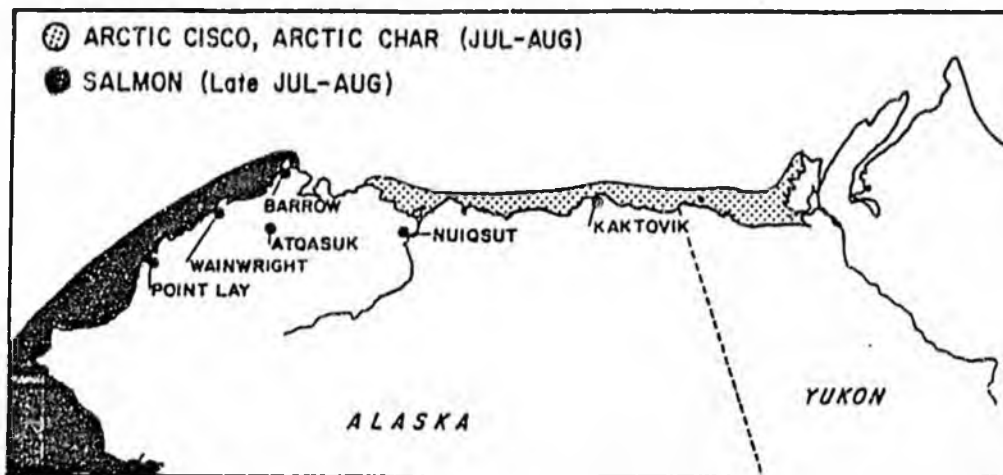


Figure 6. Coastal regions where anadromous fishes are most abundant (distribution limits would be greater than shown, however).

even-numbered years than odd-numbered years, as is the general pattern for this species in western Alaska (Heard 1986). Their run timing in coastal waters usually extends from the last week in July through August, with peak numbers occurring during the first half of August.

Chum salmon are not often caught east of Point Barrow, although there is a small population that spawns in the Mackenzie River (McLeod and O'Neil 1983).

Arctic Char

In the study area, char are most abundant between the Colville and Mackenzie rivers (Fig. 6) which accounts for their prominence in subsistence catches at Kaktovik. They are usually harvested in coastal waters from late June to September, but they are also caught at traditional inland fishing sites on the Hulahula River in fall and winter.

While in coastal waters, char range east and west along the Beaufort Sea coastline and thus individual stocks become mixed. Tagging studies have shown, for example, that char caught at Kaktovik originated from several North Slope rivers (Sagavanirktok, Canning, and Firth rivers). Thus, the summer harvest of char from coastal waters distributes the fishing pressure among several stocks, whereas fishing in the Hulahula River focuses the pressure on a single small stock.

Arctic Cisco

The arctic cisco, a favored food fish because of its fatness, is harvested primarily at Kaktovik and Nuiqsut. The coastal distribution of this species is similar to that of char (Fig. 6), but the sources of the two species differ. There are no known spawning areas for the arctic cisco in Alaska, so it is thought that the arctic cisco in the study area originate in the Mackenzie River (Gallaway et al. 1983). These authors suggest that a portion of the Mackenzie population migrates into Alaskan waters as juveniles and then remains for several years in the vicinity of the Colville River before returning to the Mackenzie River to spawn. Nuiqsut fishermen catch these arctic cisco in fall when the fish gather in

the Colville River to overwinter, and Kaktevik fishermen catch them as they migrate back to the Mackenzie in summer.

The number of arctic cisco available to these fisheries is presumably directly dependent on the number of juveniles that migrate into Alaskan waters from the Mackenzie River (Galloway and Gazey 1987, Moulton et al. 1986). This has important ramifications for the fisheries--low recruitment from the Mackenzie leads to low harvests in Alaska several years later when the fish have grown large enough to be caught. Such fluctuations are reflected in the highly variable catch-per-unit-effort for arctic cisco in Helmericks' commercial fishery in the Colville River delta (Fig. 7).

Other Anadromous Species

The rainbow smelt lives most of its life in marine waters but enters rivers in springtime to spawn. In winter these fish gather in Wainwright Inlet (lower Kuk River) where they are harvested by fishermen from Wainwright (Fig. 6). Smelt also congregate off the mouth of the Colville River in winter (Haldorson and Craig 1984), but there is no fishery for them there.

Other anadromous species important in subsistence catches are whitefishes (broad, humpback) and least cisco. These species do not disperse far in coastal waters (compared to arctic cisco and char) and are therefore most abundant near their rivers of origin. Large numbers are caught at Barrow, Atqasuk, and Nuiqsut in summer and fall.

The Bering cisco also occurs in coastal waters between Barrow and the Colville River (McPhail 1966, Craig and Haldorson 1981). This species is not abundant in the study area and is often confused with the arctic cisco because the two species look alike.

Marine Species

Relatively few marine fishes are harvested for several reasons: (1) marine species are generally small fish which yield relatively little meat for the effort expended, (2) some of the most common marine species (fourhorn sculpin, arctic flounder) are not desired tablefare, and (3) the

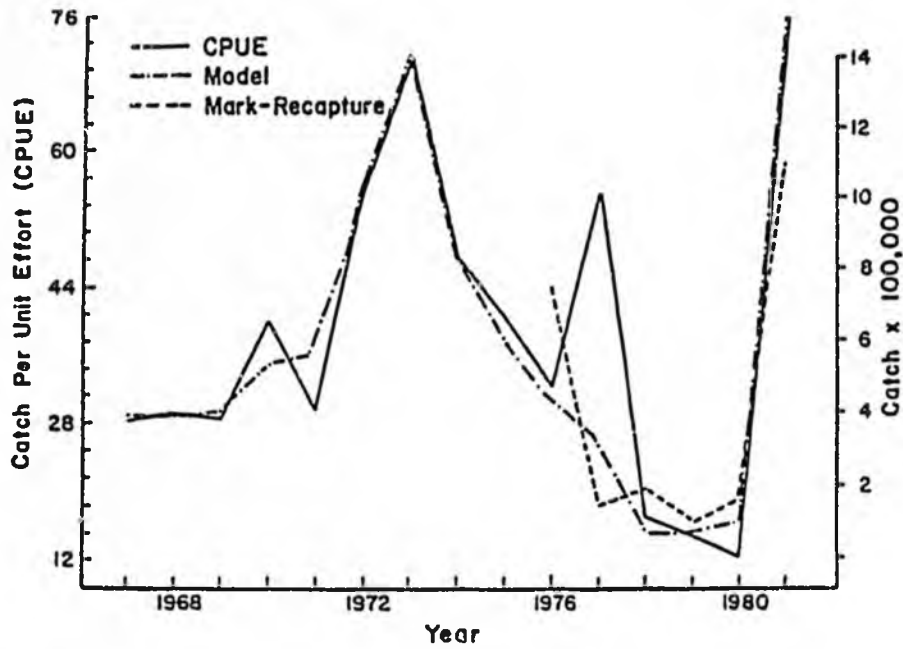


Figure 7. Population trends of Arctic cisco in the Colville delta commercial fishery (Helmericks) based on CPUE, model and mark-recapture data. Source: Gallaway et al. 1983.

marine species that are eaten (arctic cod, saffron cod) are too small to be caught by the principal fishing gear used (gillnets).

Arctic and saffron cod occur in marine waters throughout the study area. They are caught in winter by jigging a lure through the ice, but current fishing efforts are apparently less than occurred in the past.

Pacific herring are not abundant in the study area. Small populations occur along the northeastern Chukchi Sea coastline and near the Mackenzie River (Fig. 6). In the Point Lay area, herring are most abundant in August. (Note that the term "herring" may also be used by fishermen to refer to least cisco and perhaps to other juvenile whitefish.)

Relatively small numbers of capelin occur along the northeastern Chukchi Sea coast. These small fish are briefly abundant in the Point Lay area during the first week of August when they spawn along shorelines. Capelin are less abundant along the Beaufort Sea coastline, although large spawning runs occur occasionally. McAllister (1962) recorded such an event at Herschel Island during the last week of July, 1960, but this has not been observed in recent years along the Beaufort coastline.

Fourhorn sculpin are often caught by subsistence fishermen, but these fish are an unwelcome catch because their sharp spines and "horns" are difficult to untangle from gillnets and because there is little edible reward for doing so. Some sculpins were eaten by villagers in the distant past, but today these fish are discarded.

Freshwater Species

The arctic grayling is the principal freshwater fish caught on the North Slope. It is widely distributed and abundant in streams and lakes. Many are caught in subsistence fisheries in the Kukpowruk River by Point Lay fishermen and in the Meade River by Atqasuk fishermen; more are caught incidentally during other subsistence or recreational activities.

Burbot, lake trout and other freshwater species are also caught, but less frequently than grayling.

SUBSISTENCE FISHERIES

Subsistence fishing in arctic Alaska occurs throughout the study area (Figs. 8 and 9). Most fishing occurs near the villages but some also occurs away from the villages at traditional fish camps.

Fishing consists primarily of gillnetting for anadromous fishes during the open-water season and also later in fall when gillnets can be safely set under the ice (Fig. 10); lesser numbers of fish are also caught by angling in summer and by jigging a lure through the ice in winter. Gillnets are usually set adjacent to shorelines because fish catches are generally highest there. A motorized skiff is used to reach most gillnet sites, and nets are checked at about daily intervals. Fish caught are either cooked fresh or stored by freezing or drying. In modern times, most of the fish catch on the North Slope is for human consumption rather than for dog food.

As previously described, the species harvested differ according to the location of each village (Table 2) and the uneven distributions of anadromous fishes in the study area (Fig. 4). In addition, freshwater fishes are taken in inland areas, and marine fishes are occasionally caught in coastal fisheries. Invertebrates are rarely collected.

The following sections summarize information about contemporary subsistence fisheries at each village. While a number of reports describe fishing activities, few provide quantitative estimates of annual fish harvests. Locations and years for which such quantitative data are available are as follows:

Point Lay	1983
Wainwright	1973
Barrow	1973
Atqasuk	1983
Nuiqsut	1985, 1986
Kaktovik	1973, 1975, 1985

Some partial estimates of harvests are also available for Barrow (1962, 1986), Nuiqsut (1984, 1985, 1986), and Kaktovik (1985).

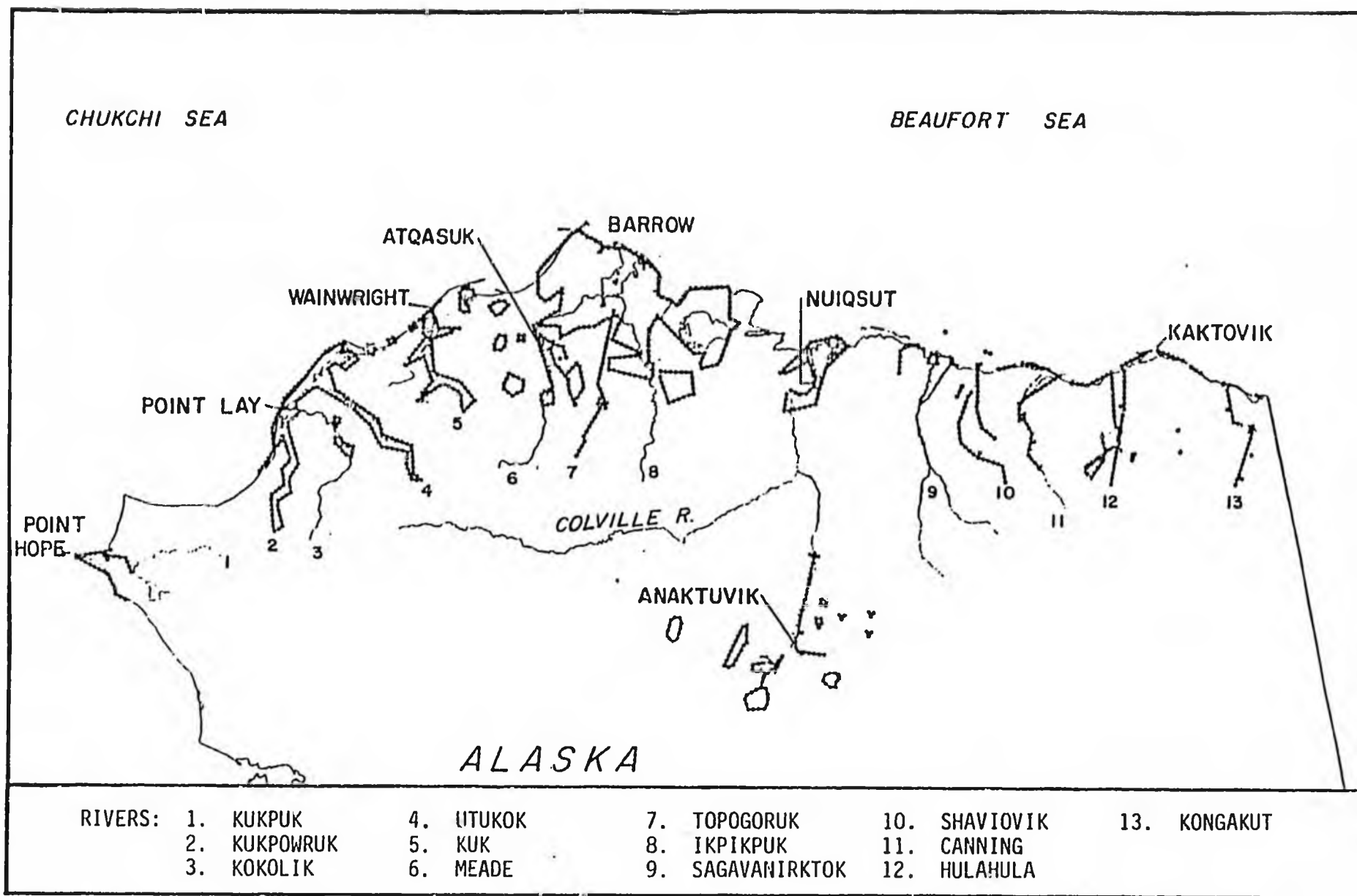


Figure 8. Areas used for subsistence fishing on the North Slope. Source: Pedersen 1979.

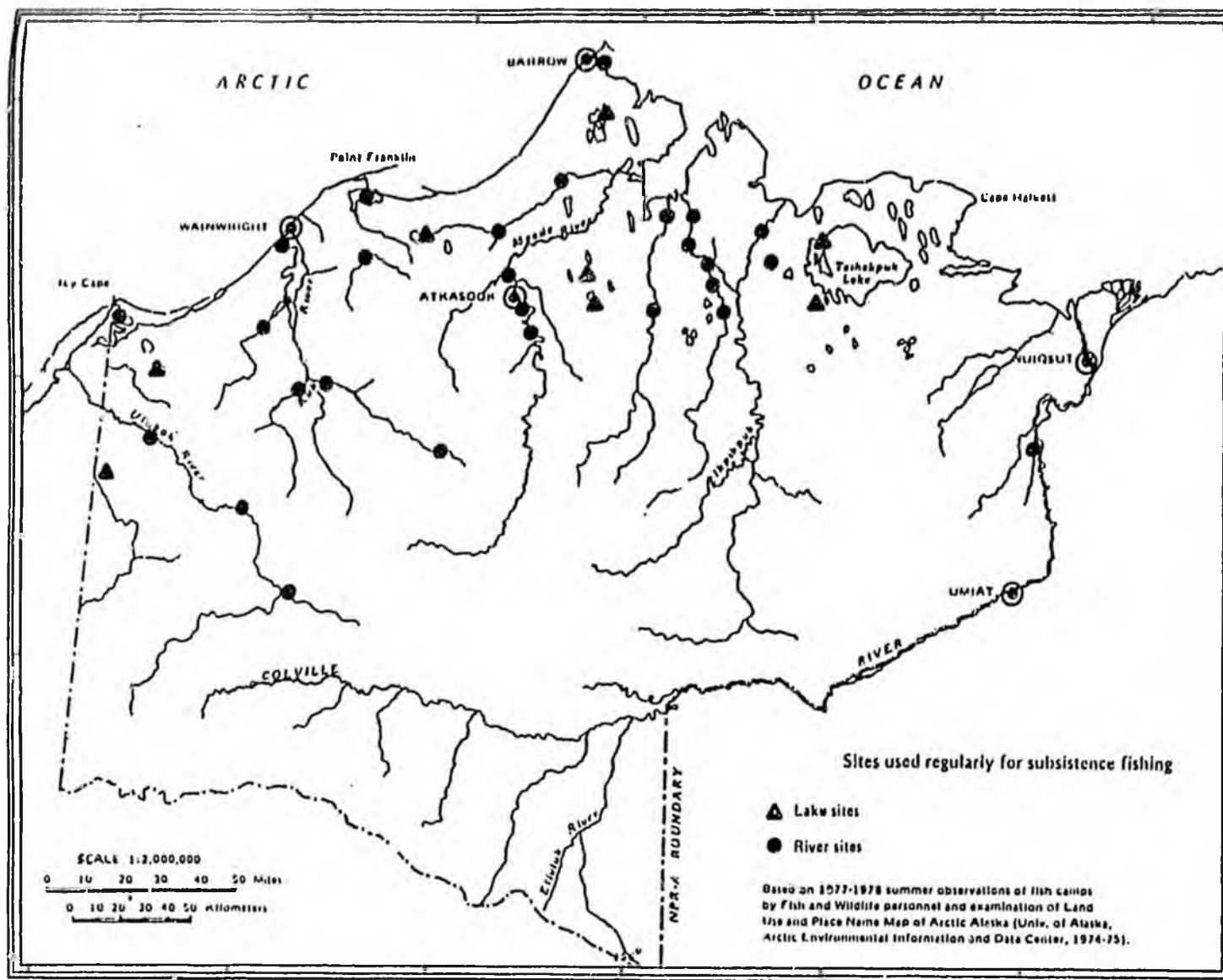


Figure 9. Sites used regularly for subsistence fishing, based on 1977-1978 summer observations by USFWS personnel and examination of the Land Use and Place Name Map of arctic Alaska. Source: USDI 1978.

Point Lay

The small village of Point Lay is located on the Chukchi Sea coast adjacent to Kasegaluk Lagoon. The village was formed by the consolidation of numerous settlements in the region in 1930 (Schneider and Bennett 1979). In 1985 the population size was 142 people.

Fishing activities at Point Lay have been described in two reports (Schneider and Bennett 1979, Craig and Schmidt 1985) which provide the basis for this section. Supplementary information is also provided in other reports (Craig and Schmidt 1982, Braund and Burnham 1984, Alaska Consultants et al. 1984).

Fishery Description

As with the other North Slope villages, the area encompassed by subsistence fishing at Point Lay is large, including coastal waters from Icy Cape to the southern end of Kasegaluk Lagoon, and inland waters including the Utukok, Kokolik and Kukpowruk rivers (Fig. 8). Summer and fall are the periods when most fishing occurs at Point Lay (Fig. 10).

Summer gillnet fishing is conducted primarily in coastal waters in July and August. Coastal areas of primary and secondary importance are shown in Figure 11, but in recent years most fishing apparently occurs within several miles of the village (Fig. 12), primarily on the lagoon side of the barrier islands. Some additional fishing occurs at Sitkok Point and at several permanent hunting camps located on both the barrier islands and the mainland south of Point Lay near Kukpowruk and Naokok passes. Summer fishing gear consists of monofilament or stranded nylon gillnets 100-150' in length and 6' deep with 3-5" stretched mesh. Species caught are pink salmon, chum salmon, and herring, with occasional char, whitefish and cisco.

During fall, a grayling fishery occurs 10-15 mi upstream on the Kukpowruk River. This occurs around October, depending on freeze-up conditions, and may extend over several days or weeks and involve a relatively large number of villagers. Most grayling are caught by jigging a lure through holes drilled in the ice.

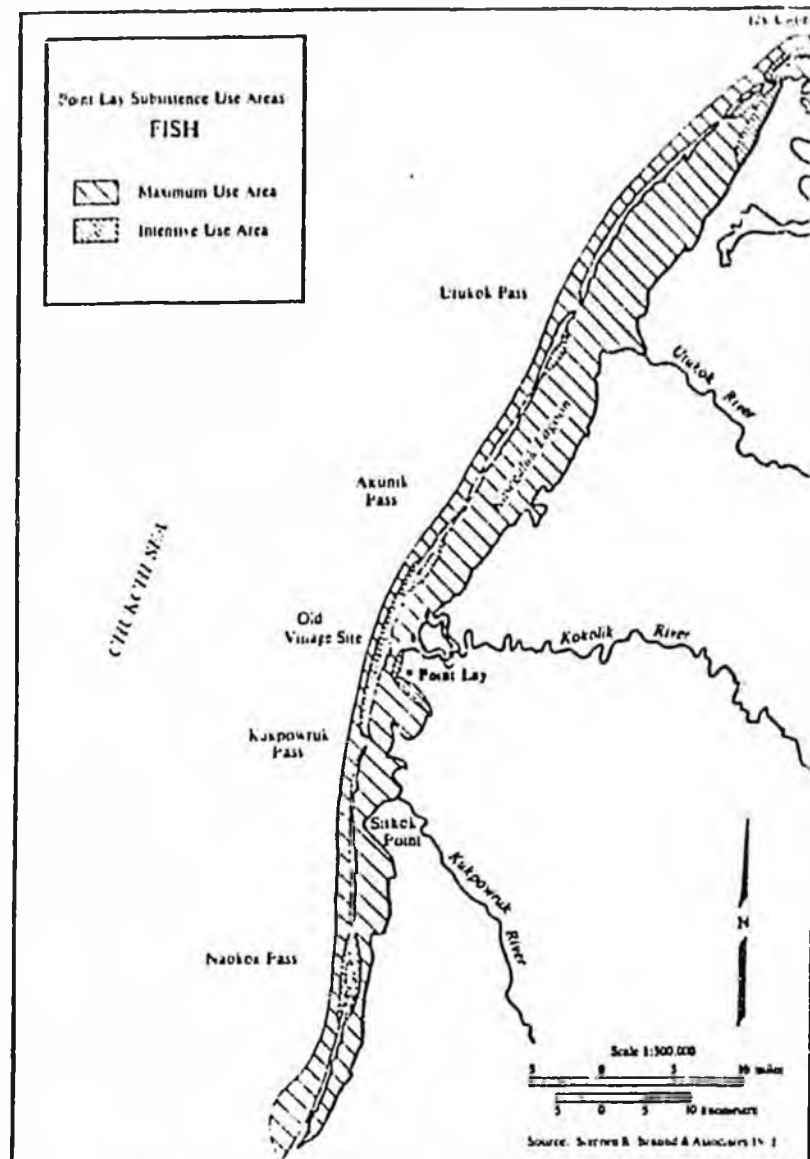


Figure 11 Point Lay subsistence use areas for fish. Source: Braund and Burnham 1984.

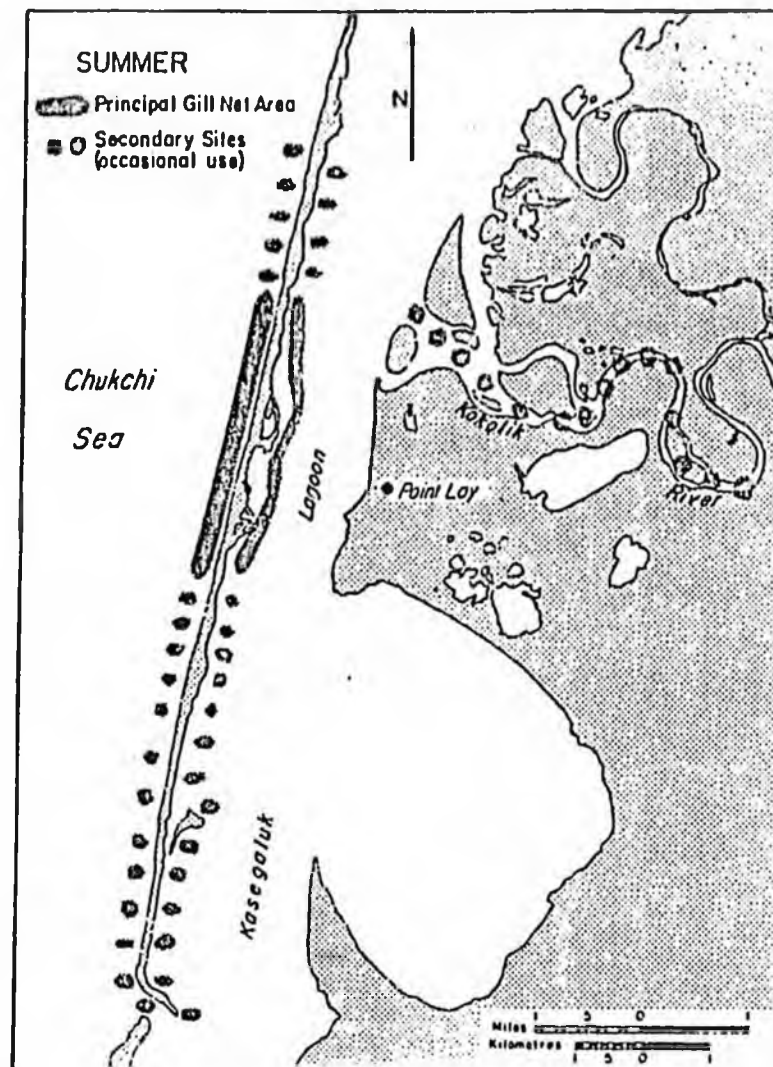


Figure 12 Point Lay subsistence fishing sites, 1983. Source: Craig and Schmidt 1985.

Harvest Quantity

Although fish have been described as a primary resource for the village and an integral part of their summer and fall subsistence activities (Schneider and Bennett 1979, Braund and Burnham 1984), the harvest was sparse during the only year (1983) when catches were monitored (Craig and Schmidt 1985).

In 1983 the summer fishery was brief (4-11 August) and was directed toward the capture of salmon migrating past the village (Table 3). Only four fishermen participated, for a combined effort of approximately 16 man-days. Craig and Schmidt (1985) assessed the harvest at the village by inspection of daily catches or interviews with the fishermen after each catch, and this quantity was doubled to account for possible catches away from the village that were not observed. An estimate of the fall fishery was obtained by interviews with local residents.

The summer fishery (143 lb, mostly pink salmon) and fall fishery (250-300 lb, mostly grayling) yielded a total catch of about 400-450 lb, for an annual per capita catch of 3-4 lb in 1983. Residents suggested that the 1983 harvest was smaller than occurs in most years. The previously-mentioned cycles in the abundance of pink salmon in arctic waters (i.e., pinks are less abundant in odd-numbered years) probably contributed to the low summer harvest in 1983.

Wainwright

Wainwright is a small community on the Chukchi Sea coastline adjacent to Wainwright Inlet (also called Kuk Lagoon or lower Kuk River). In 1985 the population size was 507.

The annual cycle of fishing activities at Wainwright has been described in detail by Nelson (1981) and JMI (1983). Nelson based his description on research he carried out between 1964 and 1981. JMI conducted their household surveys in 1982. Supplementary information is also provided in several other reports (Bane 1966, Nelson 1966 and 1969, Ivie and Schneider 1979, Craig and Schmidt 1982, Braund and Burnham 1984, Alaska Consultants et al. 1984).

Table 3. Estimated total subsistence harvest of fishes in the Point Lay area, 1983. Source: Craig and Schmidt 1985.

	<u>Estimated Number of Fish Caught</u>			<u>Estimated Total Weight² (lb)</u>
	<u>Point Lay</u>	<u>Other¹ Sites</u>	<u>Total</u>	
<u>SUMMER FISHERY</u>				
Pink salmon	18	N	36	86
Herring	30	N	60	21
King salmon	1	N	2	12
Arctic char	3	N	6	12
Bering cisco	5	N	10	11
Rainbow smelt	<u>3</u>	<u>N</u>	<u>6</u>	<u>1</u>
TOTALS	60		120	143
<u>FALL FISHERY</u>				
Grayling	N	N	N	250-300 ³

¹ N (not monitored). Sites away from Point Lay such as hunting camps were not monitored. Observations suggest that the harvest of fish on such occasions was very low, if any, during the 1983 summer. Therefore, it was conservatively assumed that the harvest away from the village was similar to that at the village.

² Original data of Craig and Schmidt (1985) have been corrected here. Total weight = no. fish x average weight of each species. Average weights were estimated from specimens caught during the study.

³ Total weight was estimated by local fishermen.

Fishery Description

Fishing at Wainwright may occur year-round, but efforts are greatest in late summer and mid winter (Fig. 10). The areas fished include nearshore coastal waters between Point Franklin and Icy Cape, and inland waters primarily along the Kuk River but also on the Kugrua, Utukok and other nearby rivers (Figs. 8 and 13).

In summer (July, August), people fish with gillnets along the beach in front of the village or in Wainwright Inlet (Fig. 14). Ocean gillnets, set about 50 m from shore, have 3-6" stretched mesh; river gillnets have slightly smaller meshes (3-5"). JMI (1983) noted that a typical ocean catch in late June was 10-18 fish/day, mostly pink and chum salmon with a few char and other species. Nets set in late July also caught mostly pink and chum salmon (Craig and Schmidt 1982). Fishing in the inlet yields rainbow smelt, whitefish, cisco and cod.

In late summer and fall (August-October), fishing in the Kuk River intensifies. Nelson (1981) observed fish camps at several upstream locations in the Kuk drainage (see also Fig. 9) where grayling, cisco, burbot and smelt were taken.

In winter (January-March), rainbow smelt are caught in Wainwright Inlet by jigging with a slender pole about 2.5' long with 4-6' of monofilament line and a small bright hook attached (Nelson 1981). The smelt from the inlet are highly regarded and may be exchanged between villages. JMI (1983) notes that these smelt have the distinction of being the only species of animal or plant that is regularly bought and sold in Wainwright.

Smelt are the only important fish regularly harvested in winter. Tom-cod (saffron cod) in the ocean were formerly caught in winter but they are not fished at present.

Harvest Quantity

The only quantitative estimate of fish harvests at Wainwright is provided by Patterson (1974) who based his estimate on information supplied by village representatives from 1969 to 1973. Harvest estimates

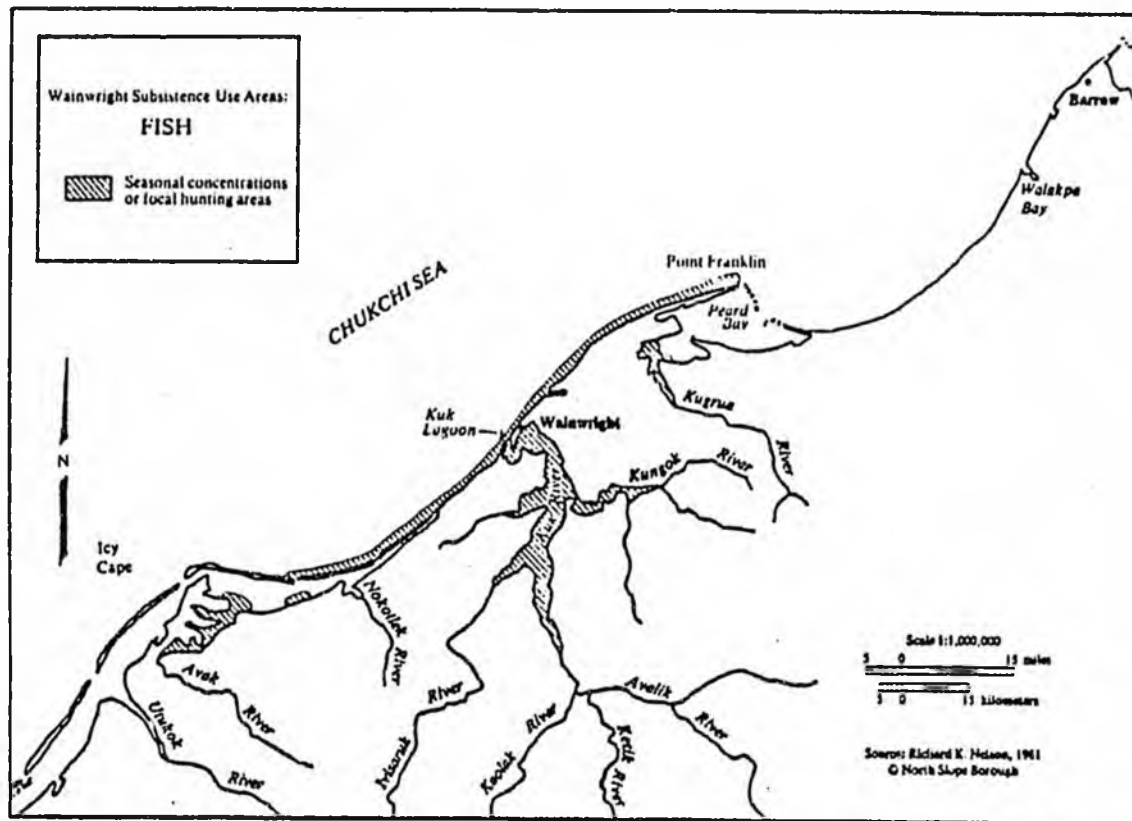


Figure 13. Wainwright subsistence fishing areas. Source: R. Nelson. North Slope Borough (1981) as presented in Braund and Burnham (1984).

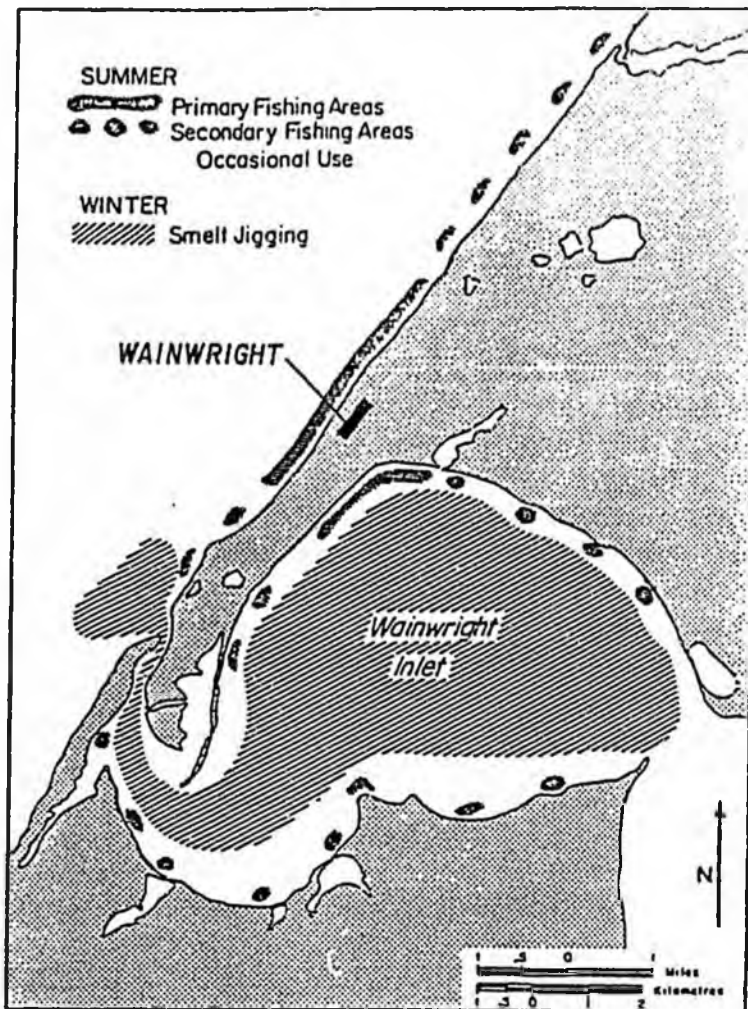


Figure 14. Wainwright subsistence fishing areas. Source: Craig and Schmidt 1982.

found in several later reports all stem from Patterson's data (Patterson and Wentworth 1977, AEIDC 1978, Stoker 1983, ADFG 1985).

During 1969-1973, the average annual fish harvest was low (about 3800 lbs), amounting to less than 1% by weight of the total harvest of all resources (mammals, birds, fish, plants) during the same period (Table 4). The annual per capita catch of fish was 9 lbs. Stoker (1983) used Patterson's figures as the estimated average fish catch over the 20-year period 1962-1982. ADFG (1986) cautions that these quantities are rough approximations because data were not systematically collected or verified.

Nelson (1981) observed that there has been a resurgence of interest in fishing at Wainwright in recent years. In 1976, for example, the North Slope Borough (cited in AEIDC 1978) estimated that a typical subsistence harvest of fish was 500 lb for a 6-member family, which equals an annual per capita consumption of 83 lb. Supportive documentation for the derivation of this estimate was not provided in the AEIDC report.

Barrow

Barrow is the largest community on the North Slope (excluding the industrial center in the Prudhoe Bay area). The present-day site of Barrow has probably been occupied continuously for about 1300 years. The population has grown steadily in recent years to 3075 people in 1985, which includes a large proportion of non-Natives (40%).

Descriptions of contemporary fishing activities at Barrow have been made by several authors (Pedersen et al. 1979, Schneider et al. 1980, Braund and Burnham 1984). Supplementary information, particularly of earlier fishing practices, is also available (e.g., Murdoch 1884, Wilimovsky 1956, Sonnefeld 1956, Hall 1983, Stern 1985). It should also be noted that subsistence fishing activities by Barrow residents overlap spatially with those of Atqasuk residents (Fig. 3), but the degree to which this currently occurs is not known.

Fishery Description

Fishing by Barrow residents occurs primarily in summer and fall (Fig. 10). The area fished is extensive (Figs. 15 and 16) because hunters

Table 4. Estimated harvest of fish at Barrow, Wainwright and Kaktovik based on interviews with village representatives, 1969-1973. Source: Patterson 1974.

Fish	Fish Harvests					
	Barrow		Wainwright		Kaktovik	
	No.	Pounds	No.	Pounds	No.	Pounds
Herring	10,000	-	-	-	-	-
Whitefish (large)	8,000	-	-	-	-	-
Whitefish (small)	8,000	-	600	-	2500	-
Grayling	2,500	-	150	-	-	-
Coho/Silver salmon*	200	-	-	-	-	-
Pink salmon	200	-	50	-	-	-
King salmon*	200	-	30	-	-	-
Smelt	-	-	-	1000	-	1000
Trout	50	-	200	-	1000	-
Arctic char	100	-	-	-	2500	-
Burbot	100	-	-	-	-	-
Tom cod	500	-	-	-	-	-
TOTALS						
number	29,850		1030+		6000+	
weight (dressed lb)		61,550		2840		15,500
weight (total lb)**		83,000		3800		21,000
% Fish in Total Harvest***		5		0.6		14
Per Capita Consumption (lb)		32		9		131

*Coho and king salmon are rare in these waters (see Craig and Haldorson 1985). These fish could have been sea-run chum salmon.

**Calculated as dressed weight = 75% total weight.

***Includes mammals, birds, fish and other wildlife.

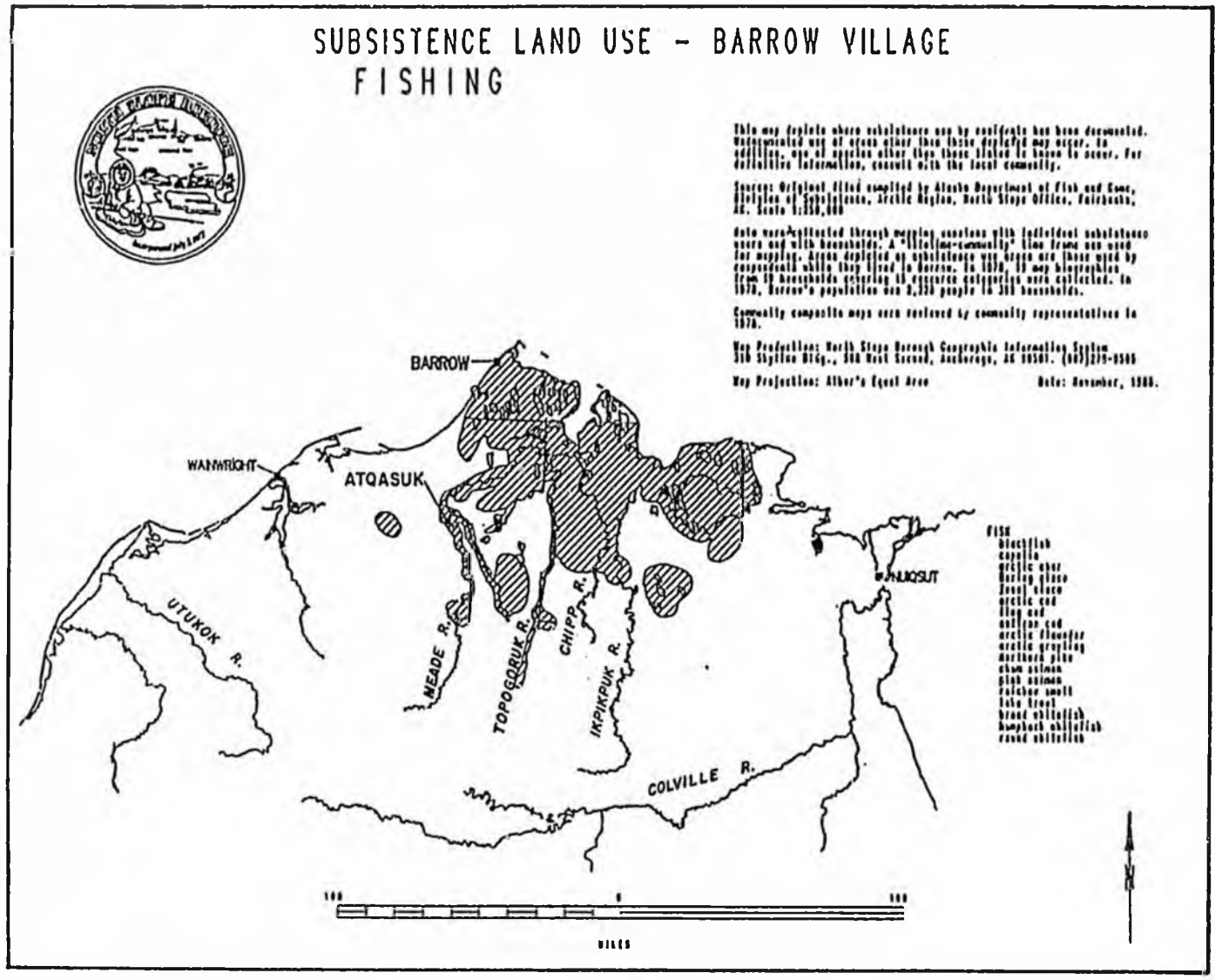


Figure 16. Barrow subsistence fishing areas. Source; North Slope Borough, Geographic Information System, Anchorage, AK.

travelling from Barrow often supplement their food supply with fish. In addition, numerous fish camps are situated on lakes and rivers in the region.

Coastal fishing areas extend from Peard Bay to Pitt Point (Fig. 15), but most fishing occurs closer to Barrow in three areas: (1) along the Chukchi Sea coastline from Point Barrow to Walikpa ("Ualiqpaat") Bay located 14 mi SW of Barrow, (2) inside Elson Lagoon near Barrow, and (3) along the barrier islands of Elson Lagoon. Fish are usually caught along shorelines by monofilament gillnets up to 50' long with 3.5" mesh. Species taken are salmon, whitefish, cisco, and char. Summer collections of shore-spawning capelin and winter jigging for arctic cod are activities which have diminished in recent years.

While coastal fishing can be an important source of fish, most of the harvest occurs at inland fish camps, particularly in lakes and rivers which flow into the southern end of Dease Inlet. As summer progresses, inland fishing activities increase and continue into November. Some families spend the summer and fall at fish camps in the Inaru, Meade, Topogoruk, and Chipp drainages. Fish are caught mostly by gillnet, with some angling. Species harvested include whitefishes, least cisco, grayling, and a few burbot and salmon.

Harvest Quantity

Harvest data for Barrow include an annual catch estimate for the period 1969-1973 (Patterson 1974), and partial catches for 1962 (Hanson et al. 1966) and 1986 (George 1986). Estimates found in several other reports all use Patterson's data (Nielsen 1977, Patterson and Wentworth 1977, AEIDC 1978, Hall 1983, Stoker 1983, ADFG 1986).

During 1969-1973, the average annual harvest of fish was about 83,000 lb (Table 4). This amounted to 5% by weight of the total harvest of subsistence resources and an annual per capita catch of 32 lb of fish. Stoker (1983) used Patterson's figures as the estimated annual harvest over the 20-year period 1962-1982. Limitations concerning this quantification of the fish harvest were mentioned earlier (see 'Wainwright'). Also, the smelt listed in the "Barrow harvest" (Table 4)

are actually fish that were caught in Wainwright Inlet and purchased by Barrow residents (Charlie Brower, pers. comm.).

The 1962 partial estimate of fish harvests was derived from interviews with 248 adults at Barrow (Hanson et al. 1966). Fish (mostly whitefish) accounted for 23% by weight of the total subsistence resources consumed by adults and 7% of an adult's total diet of both subsistence and store foods. Fish consumption was estimated to be 2.0-2.2 lb/week, for a yearly per capita consumption of 104 lb per adult. (An extrapolation of this information to calculate the total annual harvest would require more information than is available, i.e., the number of both adults and non-adults present in 1966, the amount of fish consumed by non-adults, and the amount of fish used for other purposes such as dog food.)

The 1986 partial estimate of fish harvests was for the fall fishery in the lower Inaru River. During 17-19 October 1986, George (1986) monitored the catch at "Puulayaq" located 2 mi west of Sisgravik Lake. Fishermen used gillnets 50-60' long with 2.5-3.0" mesh. The observed catch per unit effort was 93 fish/24 hr set and consisted of 424 fish equalling about 675 lb (using the average weights listed in Table 1). The catch composition was least cisco (45%), broad whitefish (36%), humpback whitefish (16%), arctic cisco (1%), fourhorn sculpin (1%), and burbot (0.5%).

Atqasuk

In the mid 1970's, the village of Atqasuk was re-established on the Meade River 60 mi south of Barrow. The population had grown to 248 people in 1985. As previously noted, the subsistence activities of Atqasuk residents overlap spatially with those of Barrow residents (Fig. 3), but the degree to which this currently occurs is not known.

The most detailed description of the Atqasuk fishery is provided by Sekerak et al. (1985). Additional information (Pedersen et al. 1979, Schneider et al. 1980) and supplementary notes (Craig and Schmidt 1982, Hall 1983, Braund and Burnham 1984, ADFG 1986) are also available.

Fishery Description

Most subsistence fishing by Atqasuk residents occurs in summer and fall (Fig. 10) in the Meade River within a few miles of the village (Fig. 17). Fish camps are also located on two nearby streams (Usuktuk and Nigisakituvik rivers) and farther downstream on the Meade River near the Okpiksak River.

Gillnets (usually 50' long with 2.5-5.5" stretched mesh) are the main gear used, although angling and some use of set lines (for burbot) also occurs. Fishing in the Meade River begins after the spring freshet in mid to late June when debris in the water has decreased. Fishing declines in September when drifting ice prohibits use of gillnets. Fall and early winter fishing (gillnets and jigging) begin after freeze-up and extend through late November or early December.

Humpback whitefish and least cisco accounted for 96% of the summer catch in 1983. Other species caught were grayling, broad whitefish, burbot, and in some years chum salmon. Winter catches in the Meade River near the village consisted mostly of humpback whitefish, grayling, and some broad whitefish.

Harvest Quantity

Quantitative data are available only for 1983 when Sekerak et al. (1985) documented the fish harvest by means of direct observation, interviews, and questionnaires given to the fishermen.

In 1983, fishing effort was fairly constant from mid July to early September when up to 12-16 gillnets were often in daily use, with an average effort of about 75 net-days per week (Fig. 18). The summer gillnet fishery in the Meade and Usuktuk rivers caught approximately 8450 lb of fish (Table 5). With the addition of summer catches by other gear (1100 lb primarily by angling) and winter catches (2700 lb), the total harvest was approximately 12,250 lb. The annual per capita catch of fish was thus about 43 lb in 1983 (when the population size was 231).

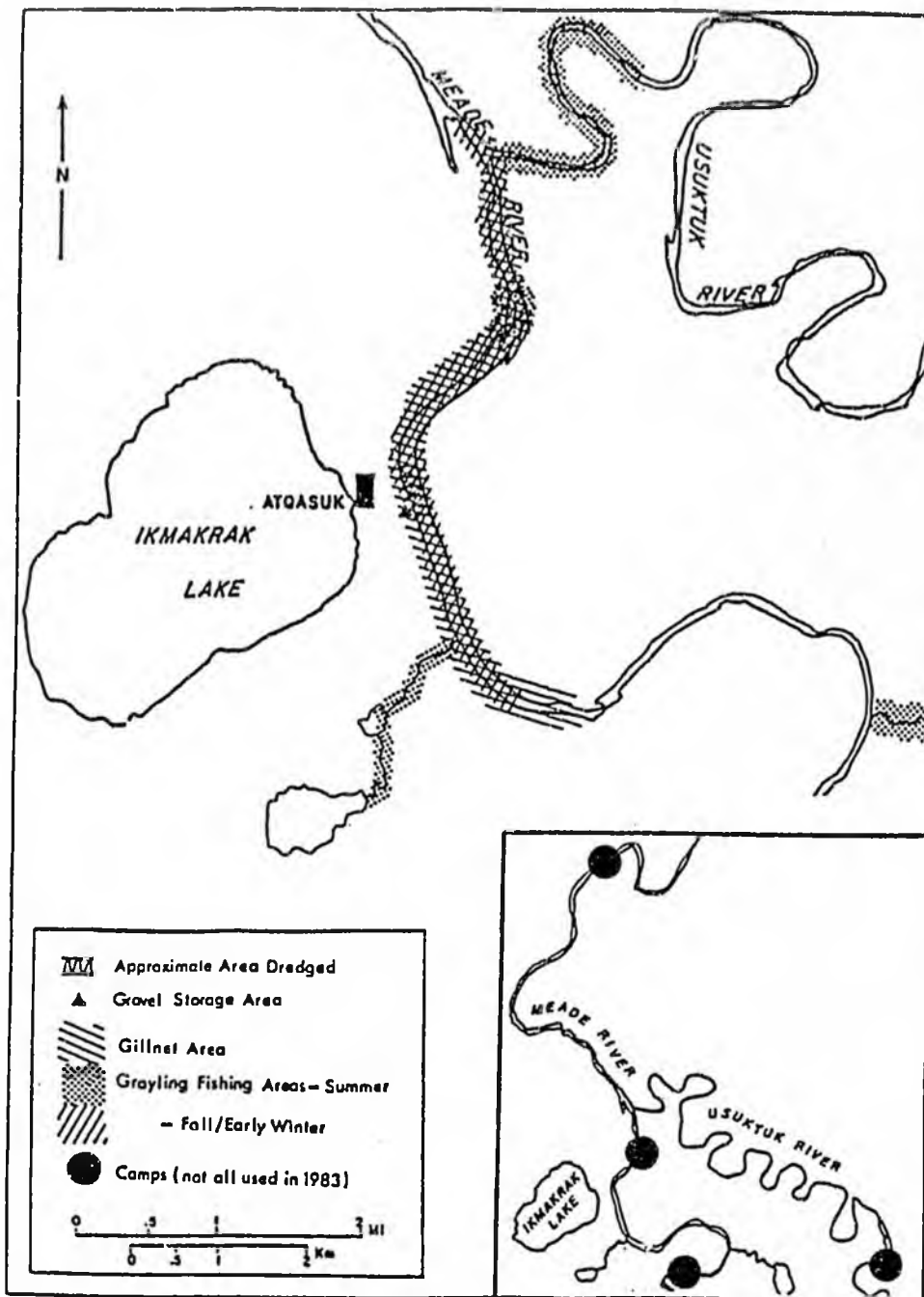


Figure 17. Important fishing areas adjacent to Atqasuk, 1983.
 Source: Sekerak et al. 1985.

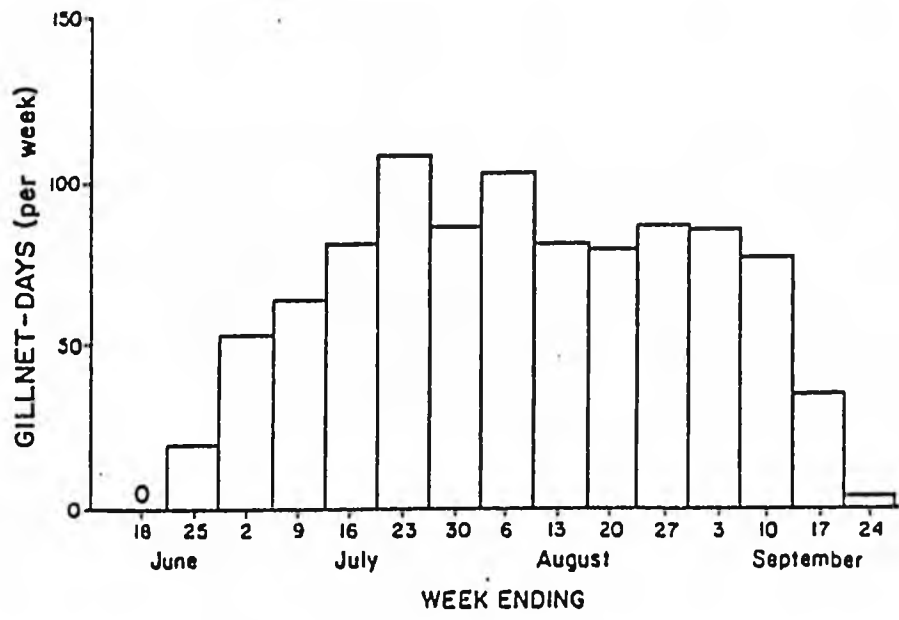


Figure 18. Atqasuk fishing effort during the summer gillnet fishery in the Meade and Usuktuk rivers, 1983. Source: Sekerak et al. 1985.

Table 5. Estimated fish harvest at Atqasuk in 1983. Source: Sekerak et al. 1985.

<u>Fishery Component</u>	<u>Estimated Fish Harvest</u>	
	<u>Number</u>	<u>Weight (lb)</u>
<u>A. Summer Fishery (Gillnet)</u>		
Humpback whitefish	3285	4380
Least cisco	4283	3730
Broad whitefish	114	174
Burbot	157	135
Grayling	43	31
Salmon*	-	-
	<u>7882</u>	<u>8450</u>
<u>B. Summer Fishery (Angling, Set Line)</u>		
All species	-	1100
<u>C. Winter Fishery (Gillnet)</u>		
All species	2700	2700**
TOTAL	<u>-</u>	<u>12,250</u>

*Salmon are caught in some years (Craig and Schmidt 1982).

**Author's original estimate of 500 lb was derived from gillnets with smaller mesh size than is used in the fishery (A. Sekerak, pers. comm.), therefore average weights of whitefish and cisco from the summer fishery were substituted here.

Nuiqsut

In 1973 the village of Nuiqsut was re-established in the delta of the Colville River, and by 1985 the population size was 332 people.

The Colville River is well-known for its abundance of fish (see also Fig. 4). The Colville delta supports both a sizable subsistence fishery for Nuiqsut residents as well as the only commercial fishery (Helmericks) in the study area. The Nuiqsut fishery has received considerable attention in recent years, and several reports provide detailed information (Hoffman et al. 1978, Libbey et al. 1979, George and Nageak 1986, George and Kovalsky 1986, Moulton et al. 1986, Entrix 1987). An additional report by Pedersen (1987) was not available in time for this review. Supplementary information is available in several other reports (NSB 1979b, Craig and Schmidt 1982, Galginaitis et al. 1984, ADFG 1986).

Fishery Description

The fishery at Nuiqsut consists primarily of gillnetting for anadromous fishes in the main channels of the lower Colville River and in nearby Fish Creek (Figs. 8, 19 and 20). Recent studies indicate that the main fishing periods occur in summer and fall/winter (Fig. 10) rather than spring and fall as indicated in earlier reports (e.g., Libbey et al. 1979).

Broad whitefish are the primary target of a gillnet fishery in summer (June-September). Fishing efforts are concentrated in three areas: the Nigliq (Nechelik) Channel, Fish Creek, and the Colville River upstream of Nuiqsut in the Tiragruaq area (Fig. 19). Large-mesh gillnets (50-100' long, 4-5.5" stretched mesh) catch large specimens of broad whitefish and other species (Table 6). Daily catch rates are generally low at this time of year--2-5 fish/net-day in July 1984 (George and Nageak 1986), and similar rates in 1985 (Table 6).

The fall/winter fishery is an under-ice effort primarily for arctic cisco. Fishing efforts are concentrated in three areas: the upper Nigliq Channel near Nuiqsut, the lower Nigliq Channel near Woods Camp, and the outer Colville delta on the main (Kupigruak) channel (Fig. 20).

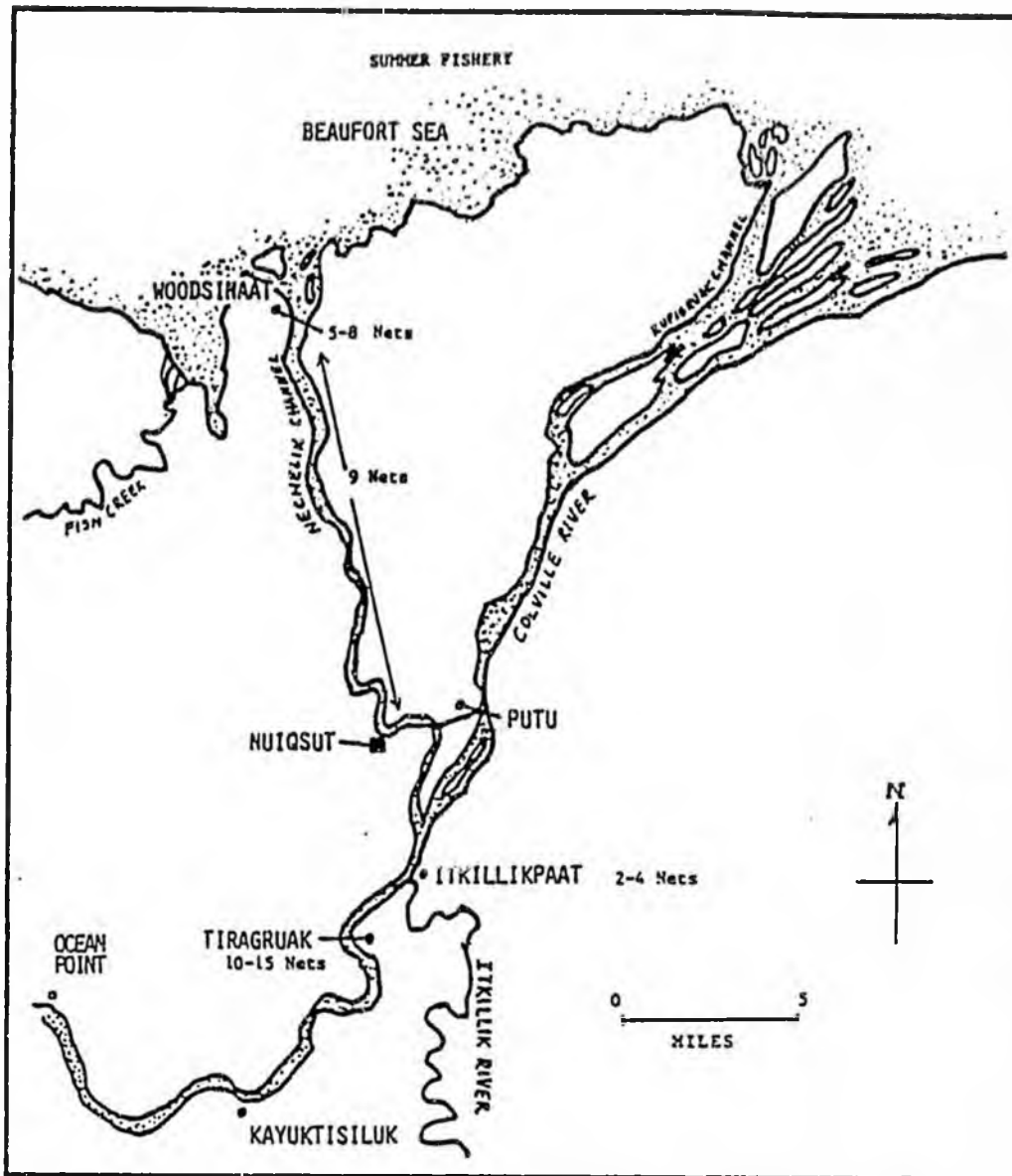


Figure 19. Nuiqsut summer fishery showing locations of gillnets in the Colville delta, July 1984. Source: George and Nageak 1986.

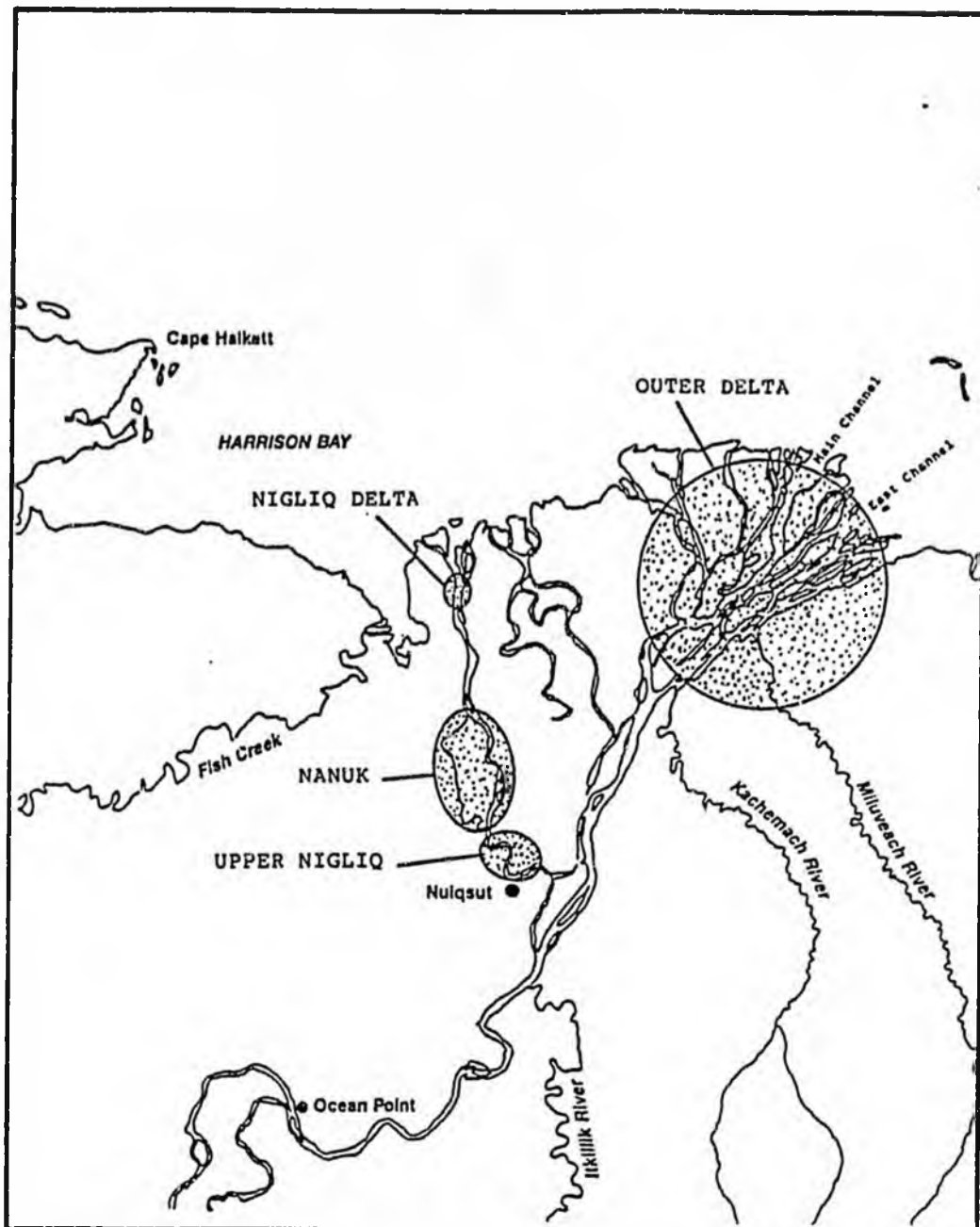


Figure 20. Nuiqsut under-ice fishing areas in fall and early winter. Source: Entrix 1987.

Table 6. Nuiqsut summer fishery: fish sizes and catch per unit effort (CPUE) in large-mesh gill nets. Source: Moulton et al. 1986.

<u>Species</u>	<u>Fork Length (mm)</u>		<u>CPUE</u>
	<u>Mean</u>	<u>(Range)</u>	<u>(Fish/Net-day)</u>
Broad whitefish	529	(365-650)	1-8
Humpback whitefish	439	(405-525)	0-1
Arctic char	600	(520-765)	0-4
Pink salmon	524	(475-595)	-

Additional fishing sites include the Fish Creek area and the Colville River upstream of the village near Kayuktisiluk (see Fig. 19).

Fall fishing begins in early October when the ice is safe to travel on, and extends into November. Peak fishing effort occurs during the last half of October. Sinking gillnets of 2.5-3.5" stretched mesh are the standard gear, with 3" mesh the most common. The catch rate is often about 15-32 fish/net-day and up to about 100 fish/net-day, which is considerably higher than the catch rate during the summer fishery. While arctic cisco are the target of this fishery, large numbers of least cisco are caught as well as some humpback whitefish, broad whitefish, rainbow smelt, and fourhorn sculpin. The abundance of arctic cisco in the Colville delta is highly variable, as previously described (Fig. 7).

Harvest Quantity

Harvest data for Nuiqsut include annual catch estimates for 1985 (Moulton et al. 1986) and 1985-86 (Pedersen 1987), and partial catch estimates for 1984 (George and Nageak 1986), 1985 (George and Kovalsky 1986), and 1986 (Entrix 1987).

Moulton et al. (1986) and Pedersen (1987) used different methods but arrived at similar estimates for the 1985 fish harvest at Nuiqsut. Moulton et al. (1986) estimated the harvest by interviews with local fishermen, periodic counts of nets in the water, and occasional trips with the fishermen as they tended their nets. About 20 groups of fishermen participated in the summer fishery. Fishing effort was greatest in late July and early August (Fig. 21), with a total effort of about 1000 net-days. The summer catch totaled about 19,260 lb, mostly broad whitefish (Table 7). In fall, approximately 30 fishing groups had a combined effort of about 1800 net-days (not including 910 net-days by the commercial fishery) and caught about 60,900 lb. Some grayling and other freshwater fishes were also caught, but the quantity is thought to be small compared to the documented portion of the harvest. The annual catch was thus about 80,160 lb, for an annual per capita catch of 241 lb. It should be noted, however, that some of this catch is not consumed locally but is shipped to Barrow.

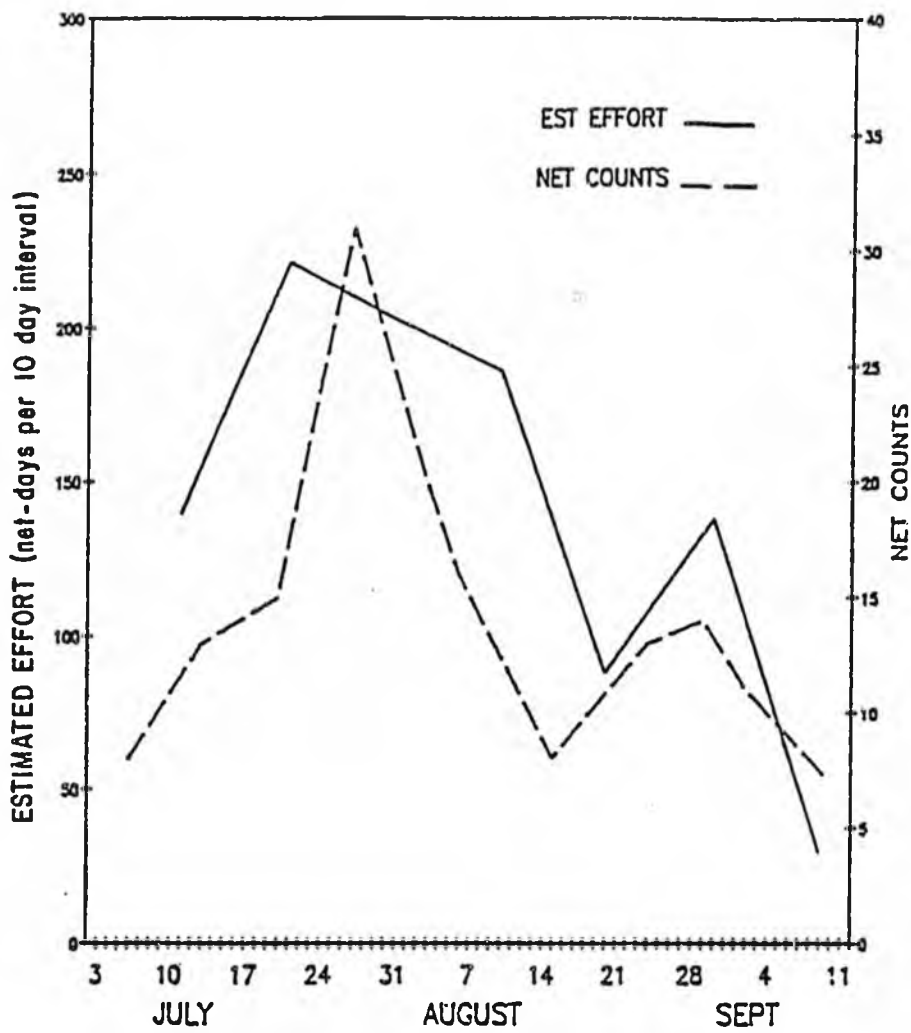


Figure 21. Nuiqsut summer fishery: seasonal gillnet effort, 1985. Source: Moulton et al. 1986.

Table 7. Nuiqsut fish harvest in 1985. Source: Moulton et al. 1986.

<u>Season and Location</u>	<u>Number Harvested*</u>					<u>Other</u>	<u>Total (lb)</u>
	<u>Broad whitefish</u>	<u>Humpback whitefish</u>	<u>Arctic char</u>	<u>Arctic cisco</u>	<u>Least cisco</u>		
A. SUMMER FISHERY							
Nigliq Channel	3,053	293	126				
Colville River	596	9	189				
Fish Creek	180						
<u>Total number</u>	<u>3,829</u>	<u>302</u>	<u>315</u>			-	
<u>Total weight (lb)*</u>	<u>17,230</u>	<u>580</u>	<u>950</u>			500**	19,260
B. FALL FISHERY							
Nigliq Channel (upper)	1,468			17,878	1,871		
Nigliq Channel (lower)				8,500			
Colville Delta (outer)				20,303	13,943		
<u>Total number</u>	<u>1,468</u>			<u>46,681</u>	<u>15,814</u>		
<u>Total weight (lb)*</u>	<u>6,610</u>			<u>43,120</u>	<u>11,170</u>		<u>60,900</u>
							80,160

*Does not include Helmericks' commercial catch.

**Estimated based on catch proportion (other species = 4% of catch).

Pedersen's (1987) report is in preparation but he provided a preliminary estimate of the fish harvest at Nuiqsut for the period July 1985 to June 1986. Because relatively little fishing occurs from January to June at the village (Fig. 10), Pedersen's data pertain mostly to 1985. Based on interviews with 40 of the 75 households in the village, Pedersen estimated the fish harvest of this subsample to be about 37,000 lb of usable or dressed weight (Table 8). An expansion of these data to all 75 households in the village yields 70,000 lb dressed weight or 94,000 lb total weight. The annual per capita catch was thus about 282 lb of fish, although as mentioned above, some of this catch was shipped outside the village. (For comparative purposes, the 1985 commercial fishery in the Colville delta harvested approximately 20,600 lb of arctic cisco and 12,300 lb of least cisco.)

Three partial estimates of fish harvests at Nuiqsut are as follows:

- (a) 1984. Based on limited data, George and Nageak (1986) estimated that the summer fishery caught more than 1000 broad whitefish, and the fall fishery caught about 12,000 arctic cisco and probably the same number of least cisco.
- (b) 1985. Data collected by George and Kovalsky (1986) were used by Moulton et al. (1986) to arrive at the total 1985 estimate described above.
- (c) 1986. In a detailed study of the fall fishery, Entrix (1987) documented that 33,522 arctic cisco and 6805 least cisco were taken in the subsistence fishery. This amounts to about 35,700 lb of fish (calculated using the conversion factors of Moulton et al. 1986). Due to a reduced fishing effort in 1986 at Nuiqsut, the fall harvest was only 59% of that taken the previous year (60,900 lb).

Table 8. Nuiqut fish catch based on preliminary data from household surveys, 1985-86. Source: Pedersen 1987.

Fish	Estimated Usable Weight (lb)		Estimated Total Harvest ²		
	Subsample ¹	Total	No. Fish ³ Caught	Weight/Fish ⁴ (lb)	Total Weight (lb)
Broad whitefish	14,137	26,674	7,845	4.5	35,300
Arctic cisco	11,509	21,715	31,021	0.9	27,920
Least cisco	3,904	7,366	14,732	0.7	10,310
Grayling	1,901	3,587	3,986	1.0	3,990
Humpback whitefish	1,830	3,453	4,316	1.9	8,200
Arctic char	1,562	2,947	1,053	3.0	3,160
Burbot	1,208	2,279	570	4.0	2,280
Salmon	719	1,357	438	5.0	1,750
Smelt	84	158	3,160	0.2	630
Lake trout	48	91	23	8.5	200
Round whitefish	5	9	9	0.7	6
TOTALS	36,963	69,636	67,153		93,746

¹Of the 75 households in the village, 40 (53%) were sampled.

²Pedersen (1987) estimated the number of fish harvested and then converted this to the edible or usable weight of the fish. Because the ratio of usable weight:total weight was not listed, it was necessary to recalculate the number of fish caught and then multiply by total fish weights to determine the total weight of the total harvest.

³Derived from Pedersen's conversion factors.

⁴Derived from Colville delta data (Moulton et al. 1986) where possible; otherwise from Table 1.

Kaktovik

The village of Kaktovik is located on Barter Island adjacent to the Arctic National Wildlife Refuge. In 1985 the population size was 220.

Several descriptions of fishing activities at Kaktovik are available (Griffiths et al. 1977, Wentworth 1979, Jacobson and Wentworth 1982, Envirosphere 1986) and supplementary information is found in other reports (Furniss 1974 and 1975, USFW 1982, Craig and Schmidt 1982, Pedersen et al. 1985, Stern 1985, ADFG 1986). In addition, USFW and ADFG conducted household surveys to determine patterns of resource use in 1985-86, but their report was not available in time for inclusion here, except for a summary table of fish catches which was provided by S. Pedersen (ADFG).

Fishery Description

While some fishing may occur year-round at Kaktovik, efforts are greatest during summer months (Fig. 10). Areas currently or formerly fished are widespread, extending along the coast from Prudhoe Bay to Demarcation Bay and far inland on many of the larger North Slope rivers (Figs. 8 and 22). These figures depict the extent of land use by Kaktovik residents over the 60-year period from about 1923 to 1983 (Pedersen et al. 1985). In recent years, most fishing occurs in the vicinity of Barter Island (Fig. 23), at several fish camps along the coastline (e.g., Griffin Point), and in the Hulahula River.

The summer fishery is primarily a coastal gillnet effort for arctic char (early in the season) and arctic cisco (later in the season). Fishing occurs around Barter Island, Bernard Spit, and Arey Island during the open water season (June to September) with peak fishing in July and August.

Gillnets are typically 100' long with 5" stretched mesh and are set several feet out from the edge of the shoreline. Some angling also occurs throughout the summer. Average sizes of fish caught in the 1985 summer fishery were 19" (482 mm) for arctic char and 15" (387 mm) for arctic cisco (Envirosphere 1986). As mentioned earlier in this report, tagging studies have shown that the char caught at Kaktovik can originate from North Slope streams between the Sagavanirktok and Firth rivers, and that

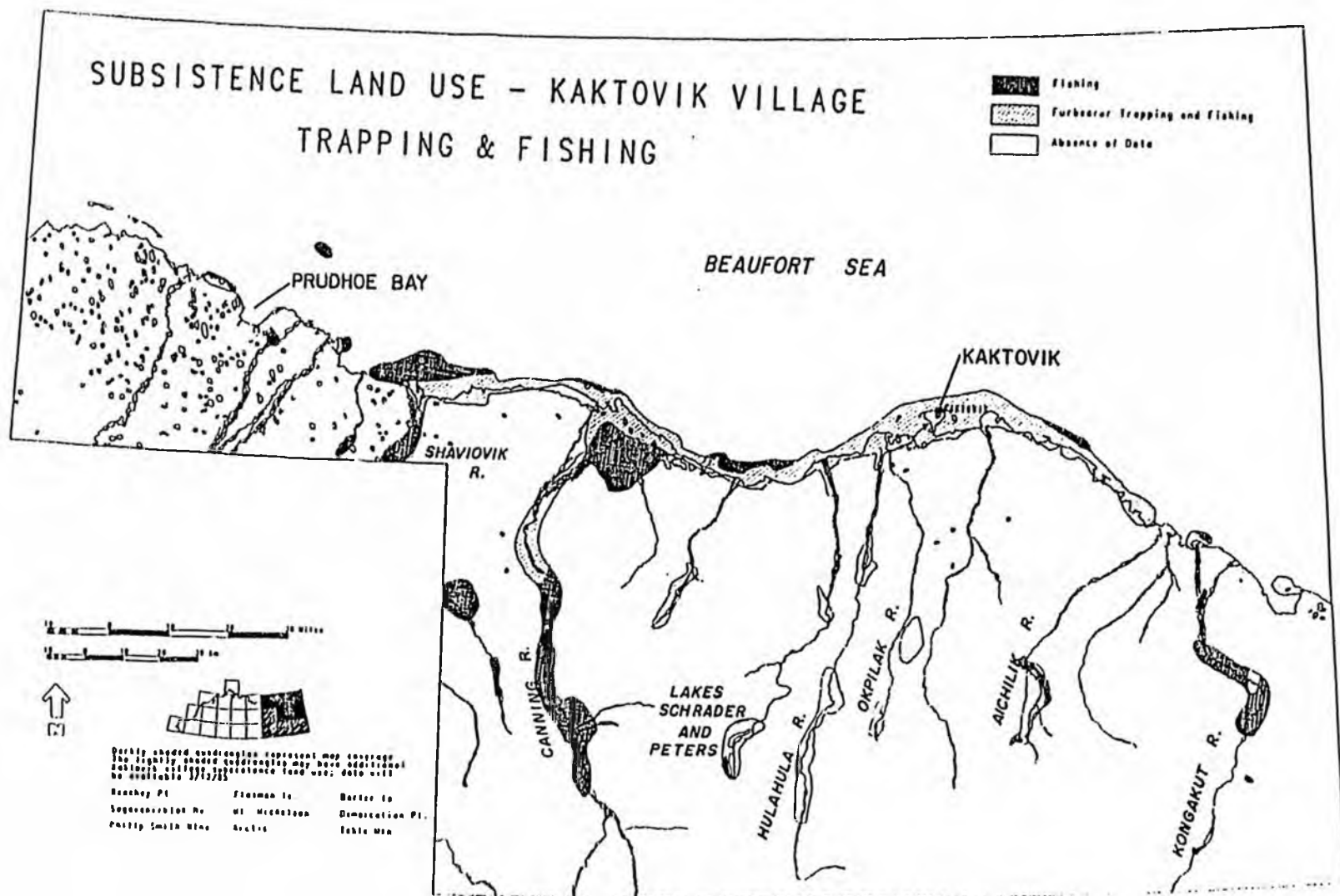


Figure 22. Kaktovik subsistence use areas for fish. Source: North Slope Borough, Geographic Information System, Anchorage, AK.

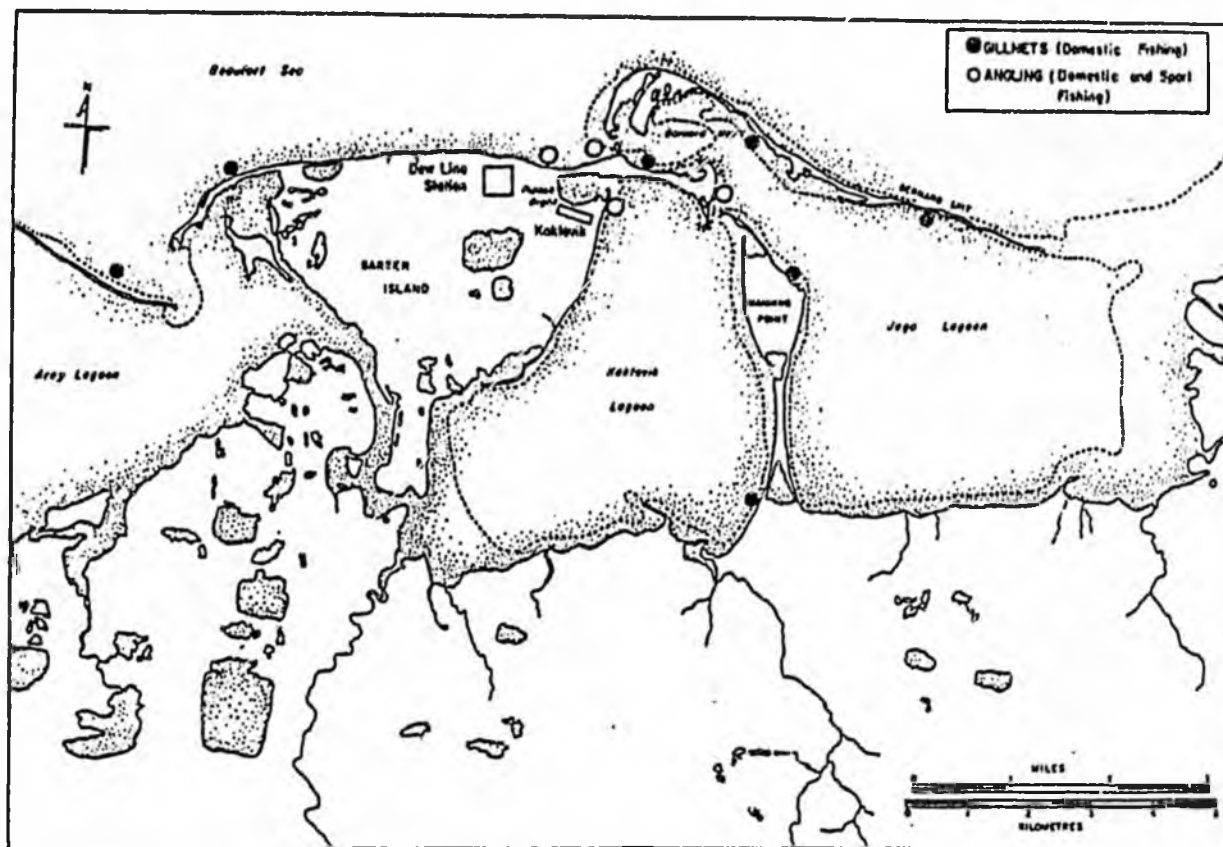


Figure 23. Kaktovik summer fishing sites in the vicinity of Barter Island, 1975. Source: Griffiths et al. 1977.

the arctic cisco are caught during their migrations to or from the Mackenzie River.

Fishing activities are reduced in winter but occur in three general areas. First, the main effort is in the Hulahula River where char are caught at three spawning and/or overwintering sites (Fig. 22). Prior to freeze-up, these fish are caught by seine or angling, and after freeze-up the fish are hooked by jigging lures through holes drilled in the ice. Second, lake trout are caught by jigging in Lake Schrader ("Neruokpuk Lake") in the headwaters of the Sadlerochit drainage. Some of these fish are up to 3' in length and weigh 20 lb, but more typical weights are 4-5 lb. Third, in some winters arctic cod are caught by jigging in coastal waters near the village.

Harvest Quantity

Harvest data for Kaktovik include annual catch estimates for 1973 (Patterson 1974), 1975 (Griffiths et al. 1977), and 1985 (S. Pedersen, pers. comm.), and a partial estimate for 1985 (Envirosphere 1986). Estimates found in several other reports all use Patterson's data (Nielson 1977, Patterson and Wentworth 1977, AEIDC 1978, Stoker 1983, Pedersen et al. 1985, Stern 1985).

Annual catch estimates for the three years were:

<u>Year</u>	<u>Harvest (lb)</u>	<u>Annual Per Capita Catch (lb)</u>
1973	21,000	105-131
1975	6,500	50
1985	12,700	58

Patterson (1974) based his estimates on interviews with village representatives and estimated that the average catch during 1969-1973 was 15,000 lb dressed weight or 21,000 lb total weight (Table 4). This amounted to about 14% by weight of the total harvest of subsistence resources and an annual per capita catch of 131 lb of fish. Stoker (1983) used Patterson's figures as the estimated annual harvest over the 20-year period 1962-1982, although he estimated that fish comprised about 22% of

the total harvest of subsistence resources and that the annual per capita catch during this period was 105 lb of fish.

The 1975 harvest estimate was derived by Griffiths et al. (1977) from questionnaires and interviews with Kaktovik fishermen. Only three Kaktovik families responded to the questionnaires, but they represented approximately 40% of the village (population size of 130 in 1975) and 70% of the total fishing activity in 1975. The estimated total harvest that year was about 6500 lb, for an annual per capita catch of 50 lb (Table 9).

Pedersen (1987) based his estimate of the 1985-86 fish harvest on interviews with 42 of the 54 households in Kaktovik. Although his data cover the period from July 1985 to June 1986, the data pertain mostly to 1985 because relatively little fishing occurs from January to June (Fig. 10). The 42 households reported catching 9151 lb of fish (Table 10). An expansion of these data to all 54 households in the village yields 11,700 lb dressed weight or 12,700 lb total weight. The annual per capita catch was thus about 58 lb of fish in 1985.

Envirosphere (1986) also interviewed Kaktovik fishermen in 1985. Based on limited data, Envirosphere suggested that the summer harvest consisted of about 1000-2000 arctic cisco and 2000-4000 arctic char, which would equal 4300-8600 lb of fish using the conversions listed in Table 10.

DISCUSSION

Two points emerge from this review--fishing is an important component of the Inupiat subsistence economy, and the sizes of the harvests are not well-documented. Although the Inupiat frequently participate in fishing activities (Kruse et al. 1981), fishing has received relatively little attention for two general reasons--it has less cultural significance than hunting (Wilimovsky 1956), and it is an activity that is not as easily quantified as are harvests of other major resources, particularly large mammals (caribou, bowhead whales).

There are several problems inherent in attempts to quantify fish harvests (AEIDC 1978, ADFG 1986):

1. Methodology. Estimates based on questionnaires or interviews with local residents are often not verifiable,

Table 9. Kaktovik fishery, 1975. Source: Griffiths et al. 1977.

<u>Location</u>	<u>Species</u>	<u>Kaktovik Fishery in 1975</u>		
		<u>Estimate of 1975 Catch</u>	<u>Average Weight/Fish (lb)</u>	<u>Estimate of Total Weight (lb)</u>
Kaktovik	Arctic char	208	1.5	310
	Arctic cisco	1,722	1.3	2,240
	Arctic cod	1,250	0.07	90
Griffin Point	Arctic char and Arctic cisco	2,000	1.4	2,800
Hulahula	Arctic char	350	1.1	390
Lake Schrader	Lake trout	150	4.4	660
TOTALS		<u>5,680</u>		<u>6,490</u>

Table 10. Kaktovik fish harvest based on preliminary data from household surveys, July 1985-June 1986. Source: Pedersen 1987.

Fish	Estimated Usable Weight (lb)		Estimated Total Harvest		
	Subsample ¹	Total	No. Fish ² Caught	Weight/Fish ³ (lb)	Total Weight (lb)
Arctic char	5,232	6,708	2,396	1.5	3,590
Arctic cisco	3,660	4,692	6,703	1.3	8,710
Grayling	167	214	238	1.2	290
Lake trout	92	118	30	4.4	130
Flounder	0.5	1	-	-	-
TOTALS	9,151	11,733	9,367		12,720

¹Of the 54 households in the village, 42 (78%) were sampled.

²Derived from Pedersen's conversion factors.

³Derived from Kaktovik data (Griffiths et al. 1977) where possible; otherwise from Table 1.

and estimates based on on-site monitoring (usually in association with biological studies) may miss catches at remote fish camps or in seasons when biologists are not present.

2. Annual Variability. Harvests vary annually, reflecting changes in fish abundance or changes in fishing effort (e.g., some people may not fish every year if other sources of employment or other game species are available). Thus, a single year's estimate of the fish harvest may or may not reflect typical conditions.
3. Cultural Considerations. Subsistence use of resources is a culturally significant activity whose value is not measured by quantity alone.

Furthermore, changing patterns of resource use have been noted by some researchers. Nelson (1981), for example, comments about a resurgence in fishing activities at Wainwright. In addition, the steadily increasing population size in North Slope communities (Fig. 24) may also exert an increasing pressure on fish resources. Consequently, pre-1980 harvest levels probably do not reflect current conditions.

Despite these data limitations, it is apparent that fish are an important resource for the Inupiat communities. A rough estimate of the annual harvest (villages combined) is about 210,000 lb of fish, or about 165,000 lb dressed weight (Table 11). Although the total harvest of land and marine mammals is considerably larger than this, it is noteworthy that the utilizable weight of the fish harvest equals roughly 70% of the average harvest of bowhead whales at the same villages: 12 whales (i.e., the average no. of whales landed each year, T. Albert, pers. comm.) x 19,580 lb (i.e., the utilizable weight of each whale, Stoker 1983) = 234,960 lb.

Given the continuing but underrated value of fish resources in modern Inupiat society, it is apparent that updated assessments of fish harvests are needed. For some North Slope villages, the only available information about harvest quantities consists of one rough estimate made 15 years ago.

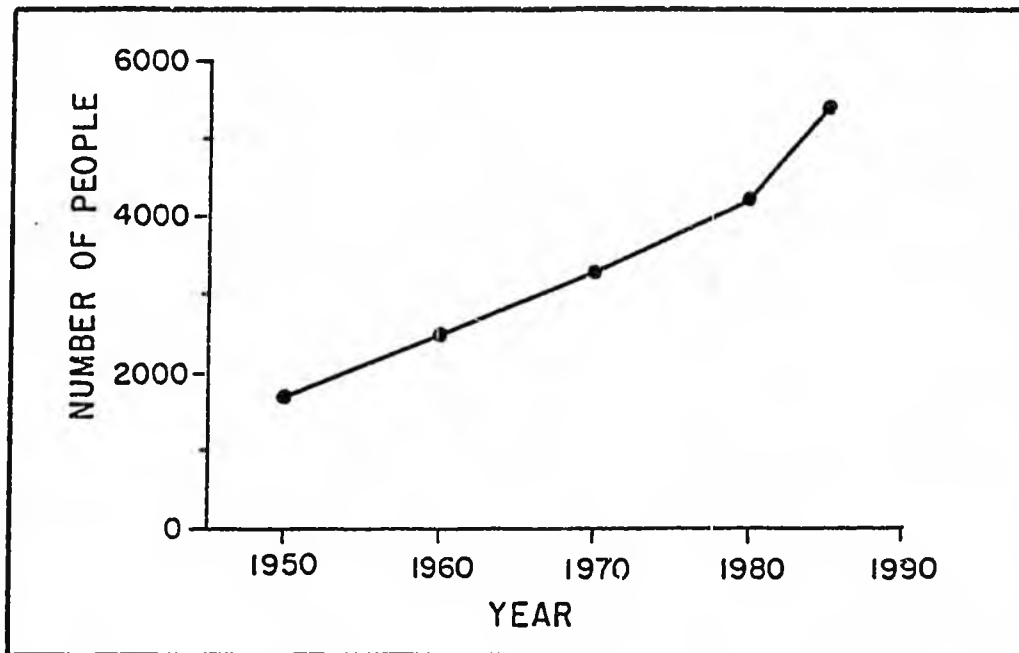


Figure 24. Number of North Slope residents (excluding oil workers in the Prudhoe Bay area). Source: Kruse et al. (1981), and State of Alaska (Dept. Community and Regional Affairs, FY 1986 Revenue Sharing Program).

Table 11. Estimated total harvest of fish at North Slope villages in 1985 (i.e., annual per capita catch x population size).

Village	Data Year		1985 ^d	Estimated Harvest in 1985 (lb)
	Year	Pcc (lb) ^a	Population Estimate	
Barrow	1973	32	3,075	98,400
Wainwright	1973	9	507	4,600
Point Lay	1983	4	142	600
Atkasuk	1983	43	248	10,700
Nuiqsut	1985	241	332	80,000
Kaktovik	1986 ^c	58	220	12,700
			Total Weight	207,000
			Dressed Weight ^d	165,000

^aPer capita catch (annual).

^bSource: State of Alaska, Dept. of Community and Regional Affairs, FY 1986 Revenue Sharing Plan.

^cPreliminary data from S. Pedersen (pers. comm.).

^dCharlie Brown (pers. comm.) notes that the whole fish (without gut) is often consumed. An average value of 80% usable weight is used here.

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FILE



Alaska Game

Number December 1989

Subsistence

Adapting Ancient Ways to Modern Times

How Alaska's Subsistence Law Affected Hunting Regulations

Only rural Alaskans could hunt or fish under subsistence regulations. In some cases, subsistence regulations provided for longer seasons, higher limits or other advantages for subsistence.

MARCH 1990
DIVISION OF SUBSISTENCE
ALASKA DEPARTMENT OF FISH AND GAME
JUNEAU, ALASKA

Alaskans hunt and fish for many different reasons and under many different circumstances. In regulation, the State of Alaska recognizes four kinds of fishing and three kinds of hunting. Fishing regulations recognize commercial, sport, personal use, and subsistence fishing. Hunting regulations recognize subsistence, resident, and non-resident hunting.

From 1978 through 1989, subsistence hunting and fishing had a priority over other consumptive uses of wildlife. Only rural Alaskans could hunt or fish under subsistence regulations. In some cases, subsistence regulations provided for longer seasons, higher bag limits, or other advantages for subsistence.

In December 1989, the Alaska Supreme Court ruled the rural priority unconstitutional. It is worth exploring how the rural priority worked. This paper describes the three steps used to apply the priority. We compare subsistence and resident hunting opportunities under 1989-90 regulations. And we examine the Nelchina caribou hunt, where the priority has been in effect since 1981.

A Three-Step Process

Under the subsistence law, the Boards of Fisheries and Game decided which communities and areas qualified for the rural subsistence priority. It was a three-step process:

1. Communities and areas had to be judged "rural." Since 1986, "rural" has been defined as areas where non-commercial uses of fish and game comprised a principal characteristic of the local economy.
2. The use of fish and wildlife by each community or area had to be customary and traditional. The community's use pattern had to meet eight criteria, such as long-term, consistent, and local.
3. Subsistence regulations had to be adopted for each rural area in the state. These regulations were to provide reasonable opportunities for communities to hunt and fish following traditional patterns.

This process is diagrammed in Figure 1. Initially, the decisions required months of staff research and board deliberation. But once all the qualified communities and uses were identified, they remained qualified unless the boards had reason to change their initial decisions.

The boards' decisions were specific. For example, the Board of Game evaluated the use of caribou in every game management unit of the state. Subsistence caribou hunting was permitted in rural areas whose residents of communities could demonstrate customary and traditional use of caribou. The process was repeated for most major species.

Under this system, rural Alaskans enjoy a priority only in specific areas. If they travel outside these areas to hunt or fish, then they must hunt under resident hunting regulations, just like non-rural Alaskans. For instance, rural Fort Yukon residents have no more access to Nelchina caribou than Anchorage residents. This means the number of potential subsistence users of any particular fish and wildlife stock is relatively small. It also links subsistence users to local wildlife populations.

By 1989 the joint boards had designated 225 Alaskan communities as rural, encompassing approximately 110,075 people or 20 percent of Alaska's population. The Board of Game identified customary and traditional uses for brown bear, caribou, deer, goats, moose, and sheep in many rural areas.

The Subsistence Advantages

Although a subsistence priority existed in law, in practice subsistence hunting regulations were quite similar to resident hunting regulations, at least from 1978 to 1989. Methods and means regulations were virtually identical for non-resident, resident, and subsistence hunts. Seasons and bag limits were similar for most resident and subsistence hunts.

But in some areas where demand for wildlife was high, subsistence hunters did enjoy longer seasons, higher bag limits, or other

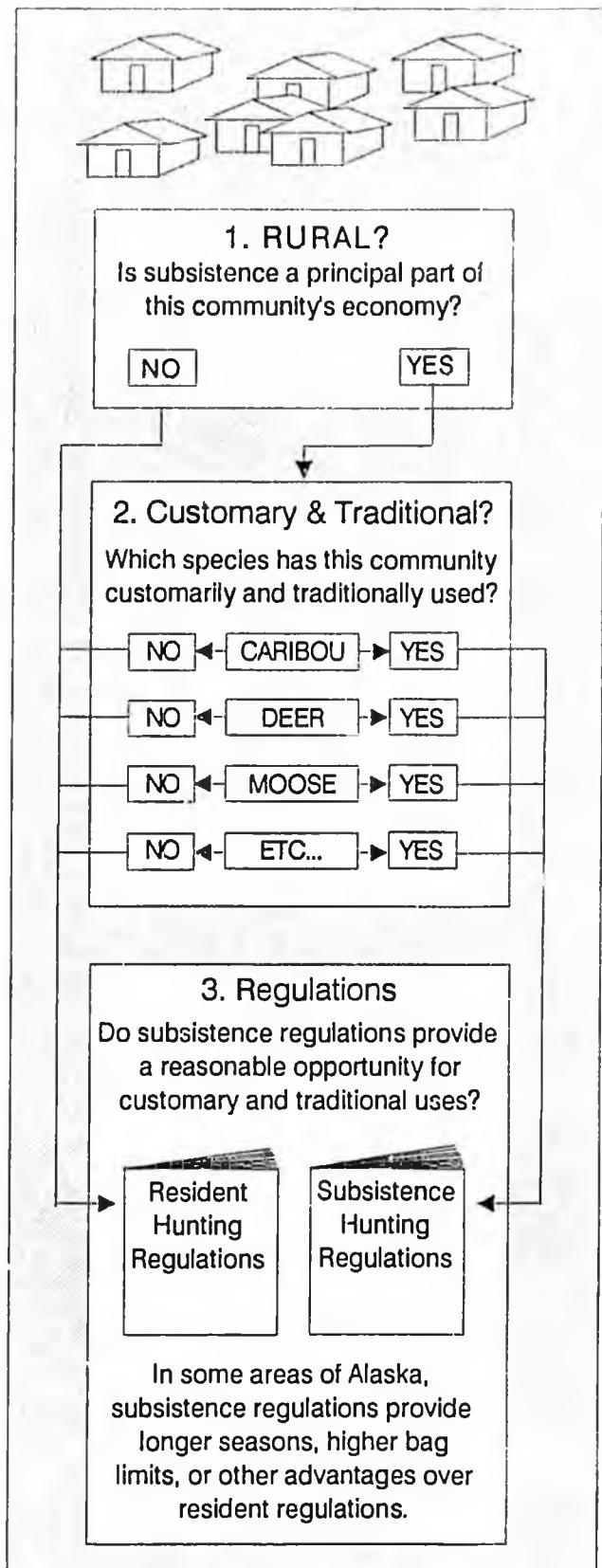


Figure 1. The Alaska Boards of Fisheries and Game use a three-step process to decide which communities will hunt and fish under subsistence regulations.

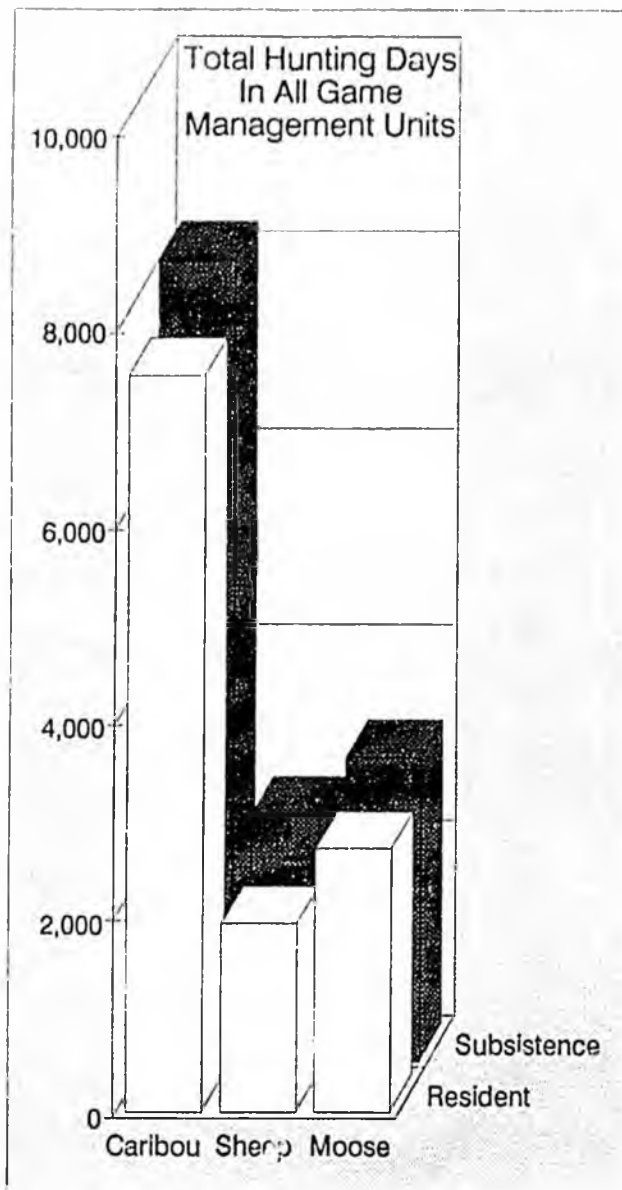


Figure 2. Subsistence regulations provided longer seasons for caribou, moose, and sheep in some areas. Hunting seasons were the same for most other species.

advantages over resident hunters for selected species. Most of the advantages were in caribou, dall sheep, and moose regulations.

Figure 2 illustrates seasonal advantages of hunting under subsistence regulations. Subsistence regulations provided 8,160 potential hunting days for caribou statewide (the total of all the open subsistence hunting seasons in all the game management subunits.) Resident regulations provided 7,500 hunting days, or 8 percent fewer. Resident moose hunts had 14

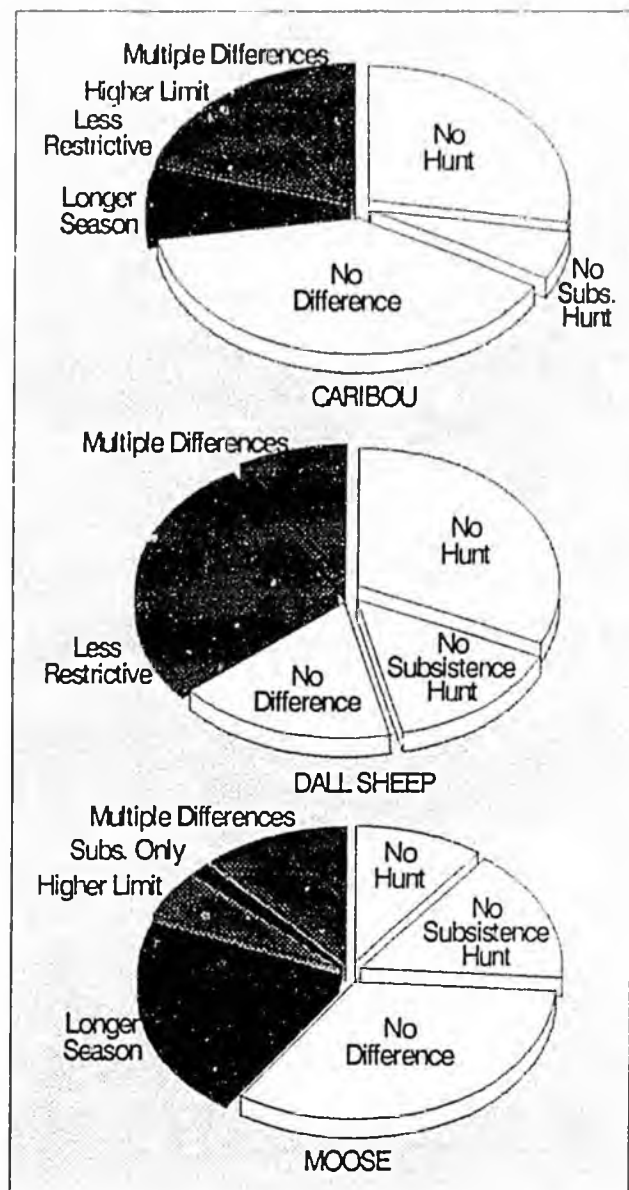


Figure 3. Charts show differences between subsistence and resident regulations in 69 game management subunits. Most other regulations applied equally to all hunters.

percent fewer hunting days compared with subsistence hunts. Resident sheep hunts had 24 percent fewer hunting days.

Subsistence regulations provided other advantages in selected game management subunits. These included less restrictive regulations about horn and antler size, for example. In some subunits, the bag limit was higher for subsistence than for other types of hunting. In some subunits, a combination of regulations provided multiple advantages (e.g.

a longer season and less restrictive antler limits). The advantages for three species -- caribou, dall sheep, and moose -- are depicted in Figure 3 and summarized below. Black bear, muskoxen, wolf, and wolverine hunts have not been affected.

Caribou are hunted in 50 of Alaska's 69 game management subunits. Four of the 50 subunits have no subsistence hunting. In 27, there is no difference between resident and subsistence regulations. Five have longer seasons. Five have less restrictive regulations on antler size or sex. Two have higher bag limits. Seven hunts offer multiple advantages.

Dall sheep are hunted in 47 subunits, 35 of which have subsistence hunts. In 12 hunts, there is no difference between resident and subsistence regulations. Nineteen hunts have less restrictive regulations on size or sex. Six have multiple subsistence advantages.

Moose are hunted in 62 of the 69 subunits. In 11, there is no subsistence hunt. In 23, there is no difference in regulations. Fifteen have

longer seasons, 4 have higher limits, and eight have multiple advantages for subsistence. One moose hunt is limited to subsistence only.

These comparisons show that subsistence regulations do provide certain advantages over resident regulations in some areas and for some species. The subsistence priority appeared to have less effect on resident hunters when trophy size was a consideration, such as in many Dall sheep hunts. Resident and non-resident hunters may impose horn size limits on themselves that are as restrictive as those placed by regulation.

Managing Nelchina Caribou

One of the best known subsistence hunts in Alaska occurs in Copper River Basin, about 150 miles northeast of Anchorage. It is an example of a subsistence hunt that offered multiple advantages to local rural residents.

As long as people have lived in the Copper River Basin, caribou have been part of the

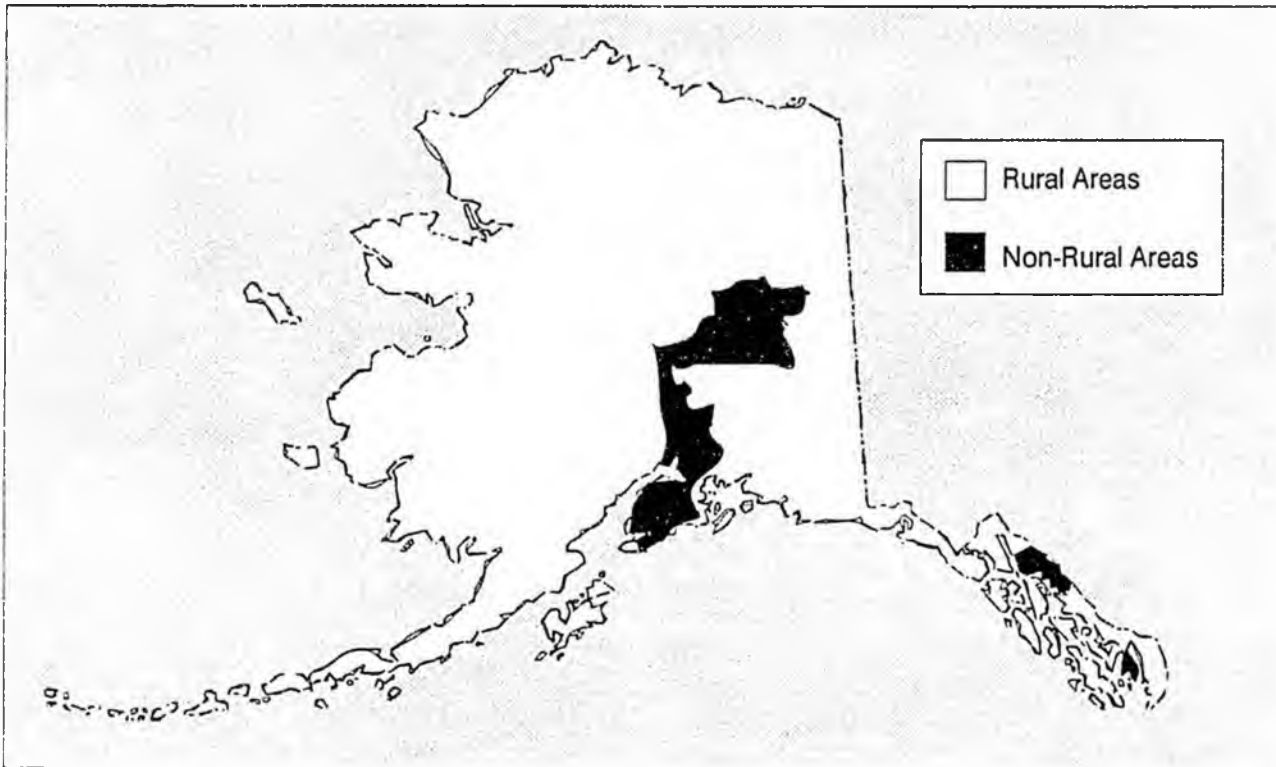


Figure 4. The Boards of Fisheries and Game have recognized most of Alaska as rural, encompassing 225 communities with about 20 percent of the population. Rural residents can hunt under subsistence regulations in their local areas.

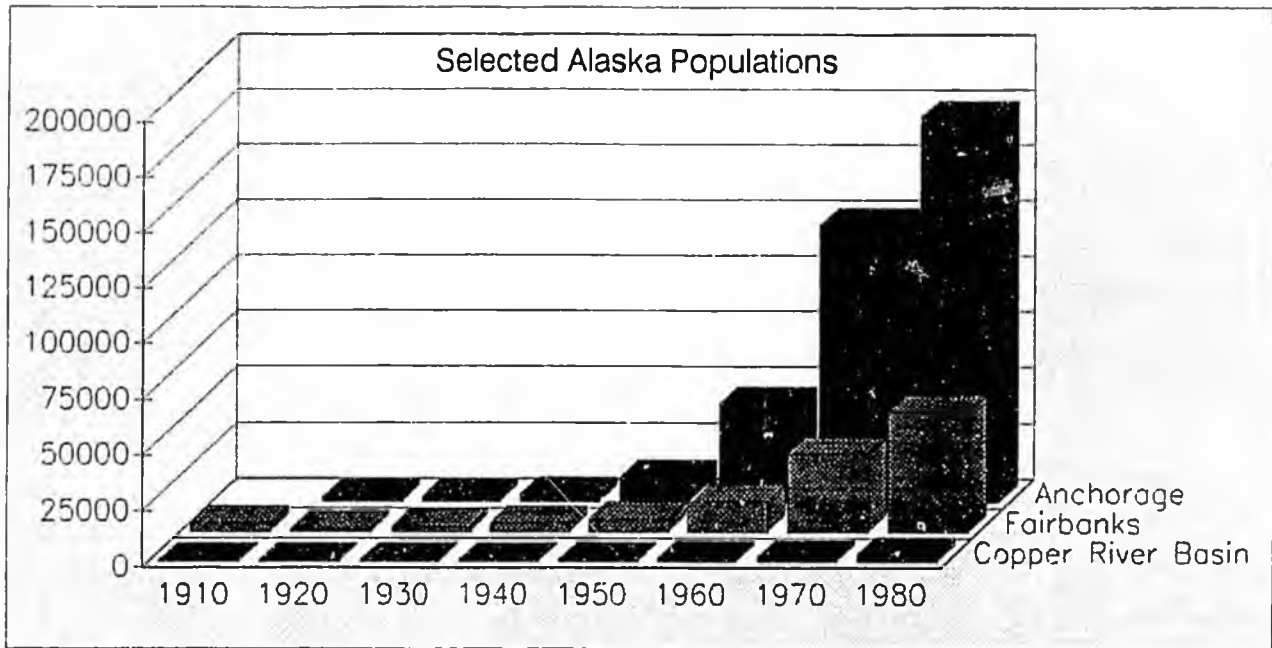


Figure 5. During the twentieth century, urban Alaska populations increased by as much as 9,000 percent, while rural populations grew much more slowly. The Copper River Basin increased about 629 percent from 1920 to 1980.

diet. Caribou was a major resource for the Ahtna people, and throughout this century local residents of the area continued to hunt caribou.

World War II brought a spate of road building to Alaska and began four decades of population expansion. The Glenn and the Richardson highways connected Anchorage and Fairbanks with Copper River Basin communities. On the one hand, this stimulated the Copper Basin economy. On the other hand it opened the Copper Basin to hunting and fishing by urban Alaskans.

Figure 5 shows the relative growth of Copper Basin, Fairbanks, and Anchorage populations from 1910 to 1980. Copper Basin communities grew from 511 in 1920 to 3,213 in 1980, a 629 percent increase. Fairbanks grew from 1,155 in 1920 to 53,983 in 1980, a 4,674 per cent increase. Anchorage grew from 1,856 in 1920 to 173,017 in 1980, 9,322 percent increase. Areas closely surrounding Anchorage and Fairbanks grew at similar rates.

Because of the highways, Nelchina caribou became the most easily accessible caribou for both Fairbanks and Anchorage area hunters.

Fortunately, during the 1950s and 1960s the Nelchina caribou herd was growing just as the urban populations was growing. So although the number of hunters on the Nelchina kept growing, the hunting regulations were quite liberal. By 1971, the caribou season was open from August 10 to March 31, and each hunter could take four caribou.

Then, in 1971-72, the Nelchina herd crashed. Whereas in 1971 hunters killed 10,131 caribou, in 1972 the entire herd was estimated to include only 7,842 animals.

In 1972, the season was reduced from eight months to 40 days; the limit from four to one. Harvested declined to 555 animals in 1972. But in 1976 when 1,807 hunters took 822 caribou in the first five days of the season, biologists closed it by emergency order.

The Nelchina caribou herd simply could not meet the increasing demand. So in 1977, the Alaska Board of Game directed the Department of Fish and Game to award 750 permits in a random drawing. Anyone could apply; a \$5.00 fee was required. The drawing permit system remains in effect today. The Nelchina caribou herd has grown since 1971,

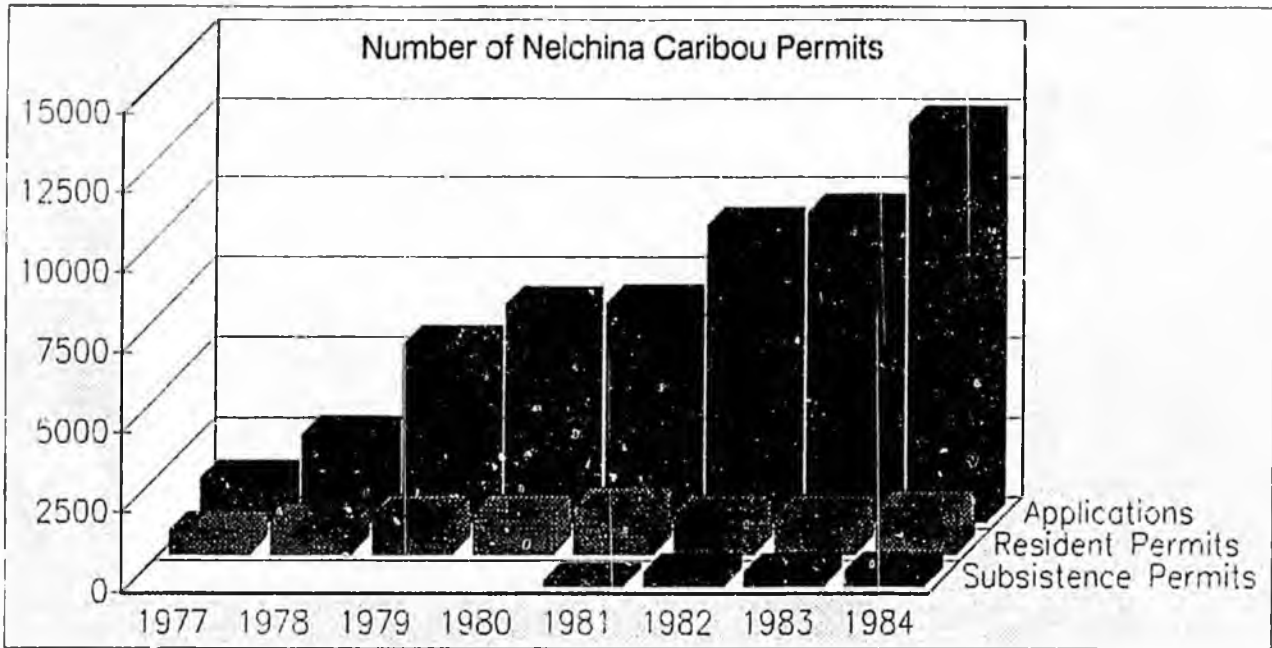


Figure 6. Following the collapse of the Nelchina caribou herd in 1971, the demand for permits soared. By 1980, a resident of the Copper Basin could expect to get a caribou permit for his own area only once every five years.

so the number of permits has grown to 2,230.

While the drawing system helped the department restore the Nelchina herd, it virtually closed hunting to Copper Basin residents. In the first year, a hunter's chance of being drawn was about one in two. The next year, it was one in three and the next year, one in four. By 1984, the chance of being drawn was less than one in six (Figure 6).

In addition, the fall hunt favored road access, the method used by most urban hunters. Most local residents traditionally hunted in winter, but in 1972 the winter season was closed. Because of these regulatory changes, Nelchina caribou ceased to be a dependable resource for local residents. Given continuing growth of urban demand, it was unlikely ever to be so again.

Some Copper Basin residents took their chances in the drawing, some stopped hunting caribou, and some hunted illegally. In 1980, a Gulkana man was charged with hunting caribou in the winter, out of season. He argued that the drawing permit hunt did not provide for his subsistence uses, as required by the subsistence law. The courts agreed.

Consequently, the Board of Game reviewed information about customary and traditional use of caribou by Copper Basin communities. The board also examined the impact of the drawing permit system.

In 1981 the board fashioned a subsistence drawing permit hunt. One hundred fifty of the 1,655 Nelchina caribou permits were set aside for residents of the Copper Basin. The Board also reopened a winter caribou season in January and February, open only to Copper Basin residents.

In 1986, the department began issuing subsistence permits through a registration system rather than by a drawing. Since then, all rural Copper Basin residents have had an opportunity to hunt caribou. The Board of Game sets a subsistence allocation, and the season closes when the allocated number of caribou have been taken.

Since 1981, the number of Nelchina caribou has increased. Consequently, the board has increased the number of subsistence and drawing permits available. But, as Figure 6 shows, there are still more hunters than there are available caribou.

Some Effects of the Priority

As we can see in the Nelchina case, the effects of a rural subsistence priority were different for rural and non-rural Alaskans. For the rural residents of the Copper River Basin, the priority restored and protected access to caribou they had customarily and traditionally used. For non-rural Alaskans, the subsistence priority reduced the number of permits available in the drawing by approximately 20 percent. This meant a non-rural resident's chance of being drawn was reduced from about one in five to about one in six.

In a previous section of this paper, we compared the number of hunting days available to subsistence and resident hunters statewide in 1989. In Table 1, we compare the number of

TABLE 1. NUMBER OF RESIDENT HUNTING DAYS BEFORE AND AFTER SUBSISTENCE PRIORITY.

	1978-79 Resident Season	1989-90 Resident Season	Change	
Caribou	5,505	7,500	+1995	(+36%)
Dall Sheep	1,855	1,900	+45	(+2%)
Moose	2,961	2,671	-289	(-10%)

hunting days available to resident hunters in 1978 (before the state's subsistence law was applied) and in 1989. Caribou, Dall sheep, and moose hunts were compared, because they have been affected most by the priority.

In the 11 years since the priority law was adopted, resident hunting opportunities for caribou increased by 36 percent. Resident opportunities for Dall sheep increased by 2 percent, while opportunities for moose decreased by 10 percent.

This comparison does not include other changes (e.g. permit requirements or bag limits) that may have been applied to resident hunts. And there is no way to ascertain how seasons might have changed in the absence of a priority. But the comparison does suggest that the priority's effect on resident hunting opportu-

nities has been less than is often assumed. While the priority has secured and in some cases increased the opportunities for subsistence uses since 1978, it has not done so at great cost to resident (i.e. non-rural) uses.

Summary and Discussion

From 1978 through 1989, the subsistence law provided the framework for making subsistence hunting regulations. A three-step process was followed by the Board of Game to identify rural subsistence uses and to develop regulations. Subsistence hunting and fishing were limited to local rural residents with customary and traditional use patterns. This ensured that the subsistence harvest of any particular fish or wildlife population would be sustainable and relatively predictable.

The two most common advantages enjoyed by subsistence hunters have been longer seasons and fewer restrictions on horn or antler size. The priority has been applied to 38 percent of caribou hunts, 58 percent of dall sheep hunts, and 45 percent of moose hunts. In most other hunts, the priority has not been applied.

In virtually every instance where the priority has been applied, resident and non-resident hunts continued in rural areas, often under the same regulations that existed before the priority. Since the priority went into effect, resident hunting seasons have increased for caribou and Dall sheep, and have decreased for moose. Only one of 69 game management subunits had a subsistence hunt without an accompanying resident hunt (moose in 1D).

The rural priority gave wildlife managers an effective management tool. In the Nelchina example, it protected local hunters from being overwhelmed by non-local hunters. Before the rural subsistence priority was implemented, hunting opportunities for rural Alaskans in some areas had been severely disrupted. With a rural priority, both subsistence and resident hunting opportunities have been able to continue in rural areas.

MEMORANDUM

Working copy

State of Alaska
Department of Law

TO Don Collinsworth
Commissioner
Department of Fish and Game

DATE February 24, 1989
FILE NO 223-85-0135
TEL NO 465-3600
SUBJECT Lime Village decision

FROM *LIS*
Larri Irene Spengler
Assistant Attorney General
Natural Resources Section

A recent federal district court decision in a case challenging subsistence hunting regulations which apply to Lime Village, a small rural community in Interior Alaska, has held that the regulations were adopted without the required analysis and record building, and has ordered the Board of Game to adopt revised regulations by June 15, 1989. Bobby v. State, A84-544 Civil. This memorandum describes action necessary under the decision, summarizes the decision, and then sets out a table of contents/synopsis of the decision. Please note that I am not denominating this memorandum confidential, and it can be used by department staff to explain the case to the public, if that is useful.

As discussed below this decision will require an executive session during the Board of Game meeting on March 8, attendance by the chairman of the Board of Game, the chairman of the appropriate regional council, Steve Behnke, and myself at a status conference in the judge's chambers in Anchorage on March 8, and will probably necessitate a short Board of Game meeting before or after the Joint Board meeting in April. The decision is very significant for fisheries, as well as game, and I am asking the Division of Boards to distribute a copy of both the 58-page decision and the three page order, along with this memorandum, to all Board of Game members, while I will provide copies to Board of Fisheries members during the Juneau meeting.

This decision is significant, not only because of its contents, but because Judge Holland, its author, is the judge who is presiding over John v. State (the Batzulnetas Copper River subsistence fishing case) and any proceedings required in Kenaitze v. State on remand. Thus, the fact that the decision in Bobby evidences a good understanding of the history of the state and federal subsistence laws, the relevant Alaska court cases, and the regulatory process in Alaska, and that the judge adopted a deferential, "reasonable and not arbitrary" standard to review the regulations, is encouraging.

In summary, the judge held that seasons and bag limits are permissible under the subsistence law, but only when those seasons and bag limits are consistent with customary and traditional uses. He indicated that he would defer to the Board of Game's determinations, but that in this instance, in part because of the (at that time) constantly changing ground rules under which the Board of Game was operating, the analysis required by the state 1986 subsistence law about how much moose and caribou were needed to accommodate subsistence hunting by residents of Lime Village was not done. The judge also held that the existing Board of Game record did not reconcile a specific finding by the board that residents of Lime Village had historically harvested moose and caribou opportunistically throughout the year with the seasons contained in the regulations, nor did the record reconcile the evidence therein that the best hunters from Lime Village did most of the hunting and shared with the other villagers with the bag limits contained in the regulations. The judge also interpreted the state "no subsistence defense" statute in a way which he believed was consistent with fundamental principles which allow a defendant to challenge the validity of a regulation he or she is charged with violating, and with the Alaska Supreme Court's ruling in Eluska.

Judge Hollan commended the Board of Game for its efforts with respect to Lime Village, recognizing the difficulties it faced at that time under the changing ground rules of Madison and Eluska, and also refrained from issuing a preliminary injunction. Instead, the court has ordered that the state submit revised caribou and moose subsistence regulations for residents domiciled in Lime Village by June 15, and that the attorneys, the chairman of the Board of Game, the chairman of the appropriate regional council, the director of the Subsistence Division (requested by a follow-up phone call), and the mayor or elder of Lime Village, if possible, attend a status conference in his chambers in Anchorage on March 8 at 4:00 p.m.. By copy of this memorandum, I am asking the Division of Boards to ensure that an executive session is scheduled during the Board of Game meeting in Anchorage on March 8, probably for late morning, at which time I will explain the litigation and its implications, and that whoever is elected chairman of the Board of Game is aware that he or she will be required to attend the status conference with me. I am also asking the Division of Boards to send a copy of the decision and order, as well as this memorandum, to the chairman of the appropriate regional council, and to make arrangements to have the chairman in Anchorage on March 8, in time to attend the executive session on the lawsuit.

Don Collinsworth, Commissioner
Department of Fish and Game
File No. 223-85-0135

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The notice for the Board of Game meeting beginning on March 6 and running through March 22 would not allow action at that meeting on Lime Village caribou regulations. Therefore, I have discussed with Beth Stewart the need to schedule another Board of Game meeting, appropriately noticed, in time for the board to address the Lime Village regulations and have them submitted by June 15. The most obvious time to schedule that meeting would appear to be just before or just after the Joint Board meeting scheduled for (an as yet unspecified) time in Anchorage. I would appreciate it if the Division of Boards would run the notice for that meeting, whenever we have it, by me. When I am talking with the Board of Game on March 8, we can discuss whether the board feels another time would be more appropriate or convenient. The judge has scheduled the status conference to go over the procedure the state will follow to comply with the decision, and it will be useful if we can have a general idea of the meeting schedule when we go into the status conference on March 8.

Under cover of a separate, confidential, memorandum, I have sent a copy of this decision and order to the criminal division and other attorneys in the Department of Law, as well as to you and the governor's office, to consider whether or not the judge's ruling on the proper interpretation of the "no subsistence defense" statute should be appealed. There is no need as yet to make a decision with respect to that, or the judge's other determinations, since a final order will not be issued until the judge approves the revised regulations the state is required to submit. (Presumably, if the judge does not approve them, the case will continue in some fashion, and eventually a final judgment would be entered, and an appeal would be appropriate at that time.) Therefore, in this memorandum I am not going to discuss the pros or cons of appealing, nor make a recommendation, as that would be premature, and would also require that this memorandum remain confidential.

Since the decision is so long, I thought it might be useful if I provide a sort of combination table of contents/synopsis of it to assist you in locating portions you may want to review:

<u>Pages</u>	<u>Description</u>
1-6	<u>Accurate description of the state and federal subsistence laws, and their history</u>
7-9	<u>Issues in the case</u>
10-15	<u>Judicial enforcement procedures:</u> the judge interprets ANILCA § 807(a) in the same way the state does, that is, that the court is to analyze the Board of Game's action under the state law, which has been certified as matching ANILCA, rather than directly under ANILCA
13-14	<u>Standard of review:</u> the judge decides that since formal rule making procedures are contemplated by ANILCA and were followed by the board, he will set aside the regulations only if they are "arbitrary, capricious, or an abuse of discretion;" the judge cautions, however, that even though the decision may have been supported by substantial evidence, where other evidence in the record detracts from that relied upon by the agency we may properly find the agency rule was arbitrary and capricious.
14-15	<u>Analytical framework:</u> the judge states that his review is limited to whether the regulations are "within the grant of power accorded the Board of Game by Alaska's second [1986] subsistence law," and whether or not the Board of Game failed to use proper procedures.
15-26	Accurate history of the <u>evolution of seasons and bag limit regulations applicable to Lime Village</u> moose and caribou hunting in the last few years.
15-19	Accurate <u>description of the state system</u> , including the functions of the boards, the Department of Fish and Game, the subsistence division and wildlife conservation division, the advisory system, and the board's regulatory cycles.
20-21	<u>Board findings:</u> the judge quotes and later heavily relies the Board of Game's own findings with respect to the use of caribou by residents of Lime Village, that the residents are "extremely dependent on moose and caribou," that they are "probably the most geographically isolated and subsistence dependent people in the

state," that moose and caribou are particularly important to Lime Village because they "supply the highest of proportion of food eaten by residents of the area," that Lime Village residents have historically harvested moose and caribou "on an opportunistic basis throughout the year."

- 26-42 Determination of inconsistency with state law
- 26-27 Court commends the board: the court recognized that "the job of dealing with subsistence was rendered even more difficult for the Board of Game because it has been caught between the demands of the courts of the State of Alaska and the Alaska Legislature," and further, the court "commends the Board of Game for its efforts to fit subsistence in its proper place in light of the difficult (if not impossible) situation which arose from the Madison decision."
- 28 Season and bag limit authority: the court concludes that "clearly the Board of Game has the power to establish seasons and bag limits as to the subsistence taking of moose and caribou."
- 28-29 Description of AS 16.05.258, the Alaska statute enacted in 1986 which establishes the procedures under which the Board of Fisheries and Board of Game are to identify fish stocks and game populations which are customarily and traditionally used for subsistence in rural areas, to find what portion, if any, can be harvested, and then how much of that harvestable surplus is needed to provide a reasonable opportunity for subsistence.
- 29 Three areas of inquiry: the court states it must ask (1) whether seasons and bag limits on their face violate the 1986 subsistence law, (2) whether the board followed the "required statutory analytical process" in adopting the seasons and bag limits for Lime Village, and (3) whether the regulations are "arbitrary or capricious in light of the evidence in the record."
- 30-32 Seasons and bag limits are not necessarily inconsistent with the subsistence law: the court explained that
- if bag limits and seasons are imposed on subsistence hunting, there must be substantial evidence in the record that such restrictions

are not inconsistent with customary and traditional uses of the game in question. It must be clear in the record that subsistence uses will be accommodated, as regards both the quantity or volume of use and the duration of the use.

The court explained that "if the required analysis were performed, and with a supporting record, the season and bag limit regulations now in force would survive plaintiffs' challenge." However, the court noted that the board must "in the future proceed with scrupulous care and caution in imposing seasons and bag limits on subsistence hunting," to ensure that they are consistent with customary and traditional uses.

31-32 Impermissible considerations: the court clarified that

the board cannot take the availability of one game population or fish stock as an element or consideration which may be employed to restrict or reduce the demonstrated customary and traditional use of another game population. Established use of moose may not be restricted solely because fish are available. The Board of Game must determine separately the level of subsistence usage of each game population.

The court also specified that "Need is not the standard. Again, it matters not that other food sources may be available at any given time or place."

32 Analysis and evidence deficient: in addressing the second and third inquiries of its analysis, described at page 29 of the decision, the court concludes that the regulations "are deficient and must be re-evaluated by the board."

33 1986 law applies: the court explains that one of the problems with the regulations is that the work on them and the findings underlying them were largely done before the 1986 state subsistence law was enacted, and that 1986 law is the one against which they must be evaluated.

- 34 Deficient under 1986 law: the court explains that because most of the work was done before the 1986 law was enacted, the regulations "were not promulgated through the use of procedural analysis mandated by Alaska's second subsistence law . . . and do not have the required evidentiary support."
- 35-36 Conflict with finding: the court relies on the board's 1985 finding that Lime Village residents historically harvested moose and caribou "on an opportunistic basis throughout the year," and explains that the record before the court at this time does not explain how the board reconciled that finding with regulations which close the hunting season on moose for six months and on caribou for four months. The court concludes that the regulations must be deemed arbitrary at this time, on this record, for they "substantially fail to accommodate what the board has determined to be the customary and traditional use of moose and caribou."
- 36-38 Bag limits lack required underlying analysis: the court explains that because most of the work was done before the 1986 subsistence law, the board did not make the "express numerical findings which the second Alaska subsistence law requires." The court explains that the board has not on the record "come to grips with the question of how much game--how many moose and caribou--were required to accommodate the customary and traditional use of these game populations by Lime Village residents." Thus, the judge finds that is not possible for him "to ascertain how the board reached its determinations . . . that the specified bag limits would accommodate the Lime Village subsistence usage of moose and caribou."
- 38-39 Bag limits inconsistent with evidence: in addition, the court noted that there is "substantial evidence" in the record that moose and caribou are "taken by a few hunters who then share their take with the whole community Simply put, the very young, the old, and the infirm of the community are provided with meat by the healthy adult members of the community who are skilled are hunting." The court explained that is not clear from the board findings or discussions how that evidence "interrelates with bag limits." The court was "concerned that the established bag limits do not accommodate this traditional aspect of Lime Village hunting of moose and caribou." (It is useful to note

that under AS 16.05.330(c), the Board of Fisheries and Board of Game do have the authority to establish community quotas, rather than managing under individual bag limits.)

- 39-40 Cautions regarding data: the court noted that data about subsistence uses is "likely to be skewed downward due to the fact that subsistence hunting was for some early years carried on, quite probably illegally with respect to both bag limits and seasons, under sport hunting regulations and most recently under subsistence regulations which (by the Board of Game's own evaluation) failed to accommodate Lime Village area requirements." The court cautioned that "the Board of Game and the Division of Subsistence of the Department of Fish and Game must do their best to correct and adjust their data to take account of the under-reporting which almost surely occurred as a result of fear of criminal sanctions which could follow accurate reporting . . . in excess of bag limits or out of season." The court further urged that plaintiffs "cooperate fully with regulators, through their advisory committees and regional council, in making a record that will support the regulations which are ultimately adopted."
- 40-41 Reasonable opportunity: in discussing the "reasonable opportunity" standard contained in AS 16.05.258, the judge explained that he understands that "recognized scientific principles of game management involve professional judgment based upon surveys which cannot be exact or calculated with mathematical precision, that successful hunting is partly skill and partly chance, and that subsistence hunters cannot be guaranteed that they will locate some predetermined number of moose or caribou in a given area and take them in a given period of time." The judge acknowledged that "all the variables--the predications, the skill, and chance--impact actual results. If the [reasonable opportunity] language is reflective of the vagaries of the foregoing variables, it is no cause for particular concern at this time."
- 42 Remand for revised regulations: the judge declines to issue an injunction against the enforcement of the existing regulations, but does order the state to submit revised regulations, adopted in conjunction with the required analysis, and with a record reconciling the evidence to the regulations, by June 15.

- 42-46 Antlerless moose: the court agrees with the attorney general's interpretation of AS 16.05.870, which the Department of Law has determined "must be implemented by the advisory committees and the board in a manner consistent with the mandate that customary and traditional uses in rural Alaska are to be authorized unless sustained yield or subsistence uses themselves would be jeopardized." (This matter has been addressed by the Department of Law in 1987 Inf. Op. Att'y Gen. (Mar. 16; 661-87-0302).)
- 46-58 Interpretation of "no subsistence defense" statute: the court describes the history of the adoption of AS 16.05.259, as part of the 1986 subsistence legislation. The court holds that the statute is not inconsistent with ANILCA, and frames the issue in terms of whether plaintiffs have the opportunity to challenge subsistence regulations which they may be charged with violating. The judge discusses the Alaska Supreme Court's decision in Eluska, which the federal court interprets to speak to a situation in which there are no regulations, rather than regulations which are allegedly invalid. The court concludes that the provision was "intended to preclude a defendant in a criminal proceeding from claiming a subsistence right in gross outside of and apart from validly enacted subsistence hunting regulations," and finds that the legislative history of the statute supports that conclusion. The court quotes a portion legislative history which the judge believes indicates that the legislature did not intend "to limit a persons ability to challenge a regulation that is unreasonable in its terms or fails to provide a reasonable opportunity to satisfy subsistence uses," in a criminal as well as civil context. Further, the court notes that fundamental principles allow defendants to challenge statutes or regulations under which he or she is charged, and that "the intent of the Alaska Legislature was that such challenges be permitted." In a footnote on page 56, the court specifically expressed no opinion on the enforceability of AS 16.05.259 in a situation which involved an absence of subsistence regulations, instead of allegedly invalid regulations.

Don Collinsworth, Commissioner
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Since I already sent you a copy of the memorandum of the decision and the order in conjunction with the earlier confidential memorandum on the "no subsistence defense" interpretation, I will not enclose another copy with this memorandum. However, I will send those enclosures to the distribution list on this memorandum, other than those who have already received a copy.

If you have any questions please do not hesitate to call.

LIS:tg

cc w/enclosures:

Norman Cohen, Deputy Commissioner
Warren Wiley, Assistant Commissioner
Steve Behnke, Director
Subsistence Division
Beth Stewart, Director
Division of Boards
Lew Pamplin, Director
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Division of Commercial Fisheries
Norval Netsch, Director
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Doug Baily
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Office of the Governor

1 of ANILCA pertains to the "subsistence way of life", making
2 provision for subsistence management and use of "public lands" in
3 Alaska. ANILCA §§ 801-816, 16 U.S.C. §§ 3111-3126, Title VIII.
4 The term "public lands" is defined by ANILCA § 102(3). 16 U.S.C.
5 § 3102(3). With certain exceptions "public lands" are lands
6 situated in Alaska, the title to which is in the United States
7 after December 2, 1980.

8 Lands owned by the State of Alaska and privately owned
9 lands were thus not directly affected by ANILCA. However, ANILCA
10 § 805(d), 16 U.S.C. § 3115(d), provided that the State of Alaska
11 might opt to enact laws of general applicability consistent with
12 ANILCA and thereby become entitled to manage fish and game on
13 public lands as well as state-owned lands in Alaska. ANILCA
14 § 805(d) provides:

15 (d) The Secretary shall not implement [the
16 federal subsistence management program] if
17 within one year from December 2, 1980, the
18 State enacts and implements laws of general
19 applicability which are consistent with, and
20 which provide for the definition, preference,
21 and participation specified in, sections
22 3113, 3114 and 3115 of this title, such laws,
23 unless and until repealed, shall supersede
24 such sections insofar as such sections govern
25 State responsibility pursuant to this sub-
26 chapter for the taking of fish and wildlife
on the public lands for subsistence uses.
Laws establishing a system of local advisory
committees and regional advisory councils
consistent with this section shall provide
that the State rulemaking authority shall
consider the advice and recommendations of
the regional councils concerning the taking
of fish and wildlife populations on public
lands within their respective regions for
subsistence uses. The regional councils may
present recommendations, and the evidence

1 upon which such recommendations are based, to
2 the State rulemaking authority during the
3 course of the administrative proceedings of
4 such authority. The State rulemaking author-
5 ity may choose not to follow any recommenda-
6 tion which it determines is not supported by
7 substantial evidence presented during the
8 course of its administrative proceedings,
9 violates recognized principles of fish and
10 wildlife conservation or would be detrimental
11 to the satisfaction of rural subsistence
12 needs. If a recommendation is not adopted by
13 the State rulemaking authority, such author-
14 ity shall set forth the factual basis and the
15 reasons for its decision.

16 Anticipating the enactment of ANILCA by over two years,
17 the Legislature of the State of Alaska adopted a subsistence
18 priority statute in 1978. Ch. 151, SLA 1978.² Significantly,
19 the Alaska priority for subsistence fishing and hunting thusly
20 created was not restricted to Alaskans residing in rural areas.
21 However, the Alaska Board of Fisheries adopted first a policy and
22 later a regulation³ which in effect linked subsistence fishing to
23 particular geographic communities. Effective May 30, 1982, the
24 Board of Fisheries and the Board of Game jointly adopted a regu-
25 lation which for the first time expressly associated subsistence
26

2 The full text of ch. 151, SLA 1978, is reproduced in
Appendix I at 1-5, inasmuch as relevant provisions are no
longer published in Alaska's fish and game code (Alaska
Statute 16), nor is it readily available in print elsewhere.

3 5 AAC § 01.597, reprinted in Madison v. Alaska
Department of Fish & Game, 696 P.2d 168, 172 (Alaska 1985).

1 fishing and hunting rights with rural residents through regula-
2 tions adopted in 1982. 5 AAC § 99.010 (1982).⁴

3 By various submissions made by the State of Alaska
4 between December 2, 1981, and April 29, 1982, the State of Alaska
5 obtained, on May 14, 1982, a determination by the Secretary that
6 the State's:

7
8 [Subsistence P]rogram will be in compliance
9 with Sections 803, 804, and 805 of ANILCA as
10 of June 2, 1982. As a result of this certi-
11 fication of compliance, the State retains its
12 traditional role in the regulation of fish
13 and wildlife resources on public lands in
14 Alaska.

15 Letter, James Watt (Secretary) to Jay Hammond (Governor of
16 Alaska), dated May 14, 1982; Appendix II at 1. By reason of the
17 foregoing determination, Alaska's 1978 subsistence priority
18 statute became operative as to all state lands and to virtually
19 all federally owned lands in Alaska.

20 Alaska's first subsistence fishing policies were
21 successfully challenged in Madison v. Alaska Department of Fish &
22 Game, 696 P.2d 168 (Alaska 1985). The Alaska Supreme Court held
23 that Alaska's priority for subsistence fishing (and therefore

24 -----
25 4 Appendix I at 12-13. The Alaska Board of Fisheries
26 understood ch. 151, SLA 1978, (in particular § 17,
AS 16.05.940(23) (1978)) to permit the restricting of fish-
ing by area of residence as a part of "first tier" subsis-
tence use management, that is, area restrictions on use not
preceded by elimination of other consumptive uses such as
sport and commercial fishing. See Madison v. Alaska Depart-
ment of Fish & Game, 696 P.2d 168, 174 (Alaska 1985).

1 presumably hunting also) would not permit the implementation of
2 the subsistence community concept. After a detailed review of
3 the legislative history of ch. 151, SLA 1978, the Alaska Supreme
4 Court observed:

5 The legislative history indicates that the
6 legislature intended to protect subsistence
7 use, not limit it. The words "customary and
8 traditional" serve as a guideline to recog-
9 nize historical subsistence use by individu-
10 als, both native and non-native Alaskans. In
11 addition, subsistence use is not strictly
12 limited to rural communities. For these rea-
13 sons, the board's interpretation of "custom-
14 ary and traditional" as a restrictive term
15 conflicts squarely with the legislative
16 intent.

17 Madison, 696 P.2d at 176 (emphasis supplied, footnote omitted).

18 At this juncture, the Alaska Supreme Court makes refer-
19 ence to ANILCA in a footnote. In addressing an argument made by
20 the Board of Fisheries, the Alaska Supreme Court observes that
21 legislation pending before Congress with regard to subsistence
22 hunting and fishing when the Alaska Legislature adopted ch. 151,
23 SLA 1978, did not then contain the "rural Alaska resident" limi-
24 tation which ultimately became a part of ANILCA as now expressed
25 in ANILCA § 803, 16 U.S.C. § 3113. In retrospect, it is clear
26 that Alaska's first subsistence law failed in one material
respect to anticipate what Congress would require in ANILCA:
ch. 151, SLA 1978, did not restrict the subsistence priority to
rural Alaskans.

As a consequence of Madison, on September 23, 1985, the
Secretary advised the Governor of the State of Alaska that the

1 State's subsistence program was no longer in compliance with
2 ANILCA. Letter, Department of the Interior to Governor William
3 Sheffield, dated September 23, 1985; Appendix II at 2. The
4 Secretary further advised the State that it had until June 1,
5 1986, to bring its subsistence program into compliance with
6 ANILCA; that is, "requir[ing] that the subsistence preference be
7 limited to those rural Alaskans who customarily and traditionally
8 make use of subsistence resources." Id.

9 In response to the foregoing, the Alaska Legislature,
10 in early 1986, adopted Alaska's second subsistence law, ch. 52,
11 SLA 1986.⁵ This act effected multiple amendments to the earlier
12 subsistence statute. The main operative provision of chapter 52
13 is codified as AS 16.05.258 which, along with applicable statu-
14 tory definitions, expressly limit subsistence hunting and fishing
15 to rural areas of the state and those residing in rural areas.⁶

16
17
18
19 -----
20 5 The full text of ch. 52, SLA 1986, is reproduced in
21 Appendix I at 6-11 inasmuch as it is difficult to identify
22 the various provisions of this chapter in codified form as a
23 part of AS 16. Hereinafter, chapter 52 is sometimes referred
24 to for convenience as "Alaska's second subsistence law".

25 6 The question of whether or not the State of Alaska has
26 defined rural areas in too restrictive a fashion to comport
with the requirements of ANILCA is the subject of a recent
decision by the Ninth Circuit Court of Appeals in Kenaitze
Indian Tribe v. State of Alaska, 860 F.2d 312 (9th Cir.
1988). The mandate of the court of appeals has not yet
issued with respect to this decision. There is no dispute
here as regards the Lime Village area being rural.

1 PLAINTIFF'S CLAIMS

2 Based upon the respective regulation-authorizing provi-
3 sions of ch. 151, SLA 1978, and ch. 52, SLA 1986, the Board of
4 Game has promulgated a series of regulations having application
5 to hunting moose and caribou in Game Management Unit 19 which
6 includes Lime Village, Alaska. These regulations form the basis
7 for plaintiffs' complaint. They are collected in Appendix I at
8 14-32.

9 The issues raised by plaintiff Bobby and the class of
10 Lime Village residents certified by the court have changed with
11 time and the additions, deletions, and amendment of regulations
12 pertaining to hunting in the vicinity of Lime Village, Alaska.
13 The issues have most recently been framed by a second amended and
14 supplemental complaint filed on October 16, 1986 (Docket No. 39).
15 This complaint focused upon the closed season, individual bag
16 limit, village harvest quota, and management area restrictions
17 imposed on Lime Village residents by the Board of Game, as well
18 as two collateral issues which are suggested by these regulations
19 or the potential enforcement of them. Plaintiffs contend that
20 the regulations are arbitrary, unreasonable, and unnecessary, and
21 that they "fail to accord to plaintiff and his class the priority
22 for non-wasteful subsistence uses required by Section 804 of
23 ANILCA." Second Amended & Supplemental Complaint at 9, " 15.

24 Plaintiffs seek a declaration that the closed season,
25 bag limit, village harvest quota, and management area restric-
26 tions are unlawful. Plaintiffs seek an injunction from the court

1 requiring the State to submit to the court, for approval and
2 incorporation into a final judgment, regulations pertaining to
3 the subsistence uses of moose and caribou by the plaintiffs.

4 The defendant denies the essential operative allega-
5 tions of the complaint.

6 The court has under consideration four motions which
7 will be discussed in the following order:

8 I. Defendant's motion for summary judgment,
9 which addresses the principal issues
10 raised by plaintiffs' second amended and
11 supplemental complaint; namely, the
12 regulation of the taking of moose and
13 caribou through the imposition of hunt-
14 ing seasons and bag limits.

15 IIA. Plaintiffs' supplemental motion for par-
16 tial summary judgment on a collateral
17 issue, pertaining to the taking of
18 antlerless moose and the impact of
19 AS 16.05.780 thereon.

20 IIB. Defendant's motion to dismiss, also
21 directed at the antlerless moose stat-
22 ute. This motion to dismiss also seeks
23 to carve out of plaintiffs' complaint a
24 challenge to the creation of a manage-
25 ment area for Lime Village.
26

1 III. Plaintiffs' motion for partial summary
2 judgment, which puts before the court a
3 second collateral issue concerning the
4 interpretation and application of
5 AS 16.05.259, which statute purports to
6 prohibit persons such as plaintiffs from
7 asserting subsistence priority rights as
8 a defense to state prosecution for the
9 violation of game regulations.

10
11
12 DISCUSSION

13 I.

14 Regulation of the Taking of Moose & Caribou

15 The court takes up first the issues which are the
16 primary focus of the case and the State's motion for summary
17 judgment. This motion brings before the court the contentions of
18 plaintiffs' second amended and supplemental complaint with
19 respect to the imposition of seasons and bag limits on the taking
20 of caribou and moose by the residents of Lime Village (the plain-
21 tiffs here). The motion is opposed. Before addressing the sub-
22 stance of these issues, some preliminary comments upon the nature
23 of these proceedings, and in particular the scope and type of
24 judicial proceedings under ANILCA § 807, 16 U.S.C. § 3117, are
25 appropriate.

1 A.

2 Judicial Enforcement of ANILCA

3 Section 805(a)-(c) of ANILCA, 16 U.S.C. § 3115(a)-(c),
4 sets out the basic federal structure for implementation of the
5 subsistence rights created by Title VIII of ANILCA on public
6 lands within the State of Alaska. Prior to ANILCA, management of
7 fish and wildlife on public lands in the State of Alaska had been
8 carried out by the State of Alaska through its Department of Fish
9 & Game. But for the provisions of ANILCA § 805(d), 16 U.S.C.
10 § 3115(d), management of fish and game on federally owned public
11 lands in the State of Alaska would have been given over to the
12 Department of the Interior.

13 ANILCA § 805(d), 16 U.S.C. § 3115(d), in substance
14 provides that the Secretary will not implement the federal sub-
15 sistence priority program if the State of Alaska, "enacts and
16 implements laws of general applicability which are consistent
17 with, and which provide for the definition, preference, and
18 participation specified in, §§ 3113, 3114, and 3115 of [ANILCA]."
19 ANILCA §§ 803, 804, and 805. The State of Alaska has adopted
20 such a law in Chapter 52, Session Laws of Alaska 1986,
21 AS 16.05.258. Section 6, ch. 52, SLA 1986, AS 16.05.258, sets
22 forth the detailed procedure by which the Board of Game is to
23 allocate fish and game for subsistence uses. Plaintiffs do not
24 challenge the consistency of ch. 52, SLA 1986, with ANILCA.

25 AS 16.05.255 has at all times here pertinent provided
26 generally that:

1 (a) The Board of Game may adopt regulations
2 it considers advisable in accordance with the
Administrative Procedure Act (AS 44.62) for

3

4 (2) establishing open and closed seasons
5 and areas for the taking of game;

6

7 (4) setting quotas, bag limits, harvest
8 levels, and sex, age, and size limitations on
the taking of game

9 Section 6, ch. 52, SLA 1986, AS 16.05.258(f), specifically pro-
10 vides that:

11 (f) Takings authorized under this section
12 are subject to reasonable regulation of
seasons, catch or bag limits, and methods and
13 means

14 Pursuant to the foregoing state authority, the Board of Game has
15 undertaken from time to time the enactment of various regulations
16 pertaining to the taking of moose and caribou by plaintiffs,
17 residents of Lime Village, Alaska.

18 It is entirely clear that Congress understood that
19 there would be state regulation of subsistence uses and made
20 provision for the same in ANILCA. In this regard, ANILCA
21 § 805(d), 16 U.S.C. § 3115(d), in authorizing state management of
22 subsistence uses, provides in part:

23 Laws establishing a system of local advisory
24 committees and regional advisory councils
consistent with this section [16 U.S.C.
25 § 3115] shall provide that the State rule-
26 making authority shall consider the advice
and recommendations of the regional councils
concerning the taking of fish and wildlife

1 populations on public lands within their
2 respective regions for subsistence uses.
3 ...If a recommendation is not adopted by the
4 State rulemaking authority, such authority
5 shall set forth the factual basis and the
6 reasons for its decision.

7 (Emphasis supplied.) Plaintiffs do not challenge the Board of
8 Game's power to promulgate regulations.

9 Plaintiffs do challenge the Board of Game's various
10 regulations which establish seasons and bag limits for the taking
11 of moose and caribou. They contend these regulations are "arbi-
12 trary, unreasonable, and unnecessary, and they fail to accord to
13 plaintiff and his class the priority for non-wasteful subsistence
14 uses required by Section 804 [16 U.S.C. § 3114] of ANILCA."
15 Plaintiffs' Second Amended and Supplemental Complaint at 9, ¶ 15.

16 Section 807(a) of ANILCA, 16 U.S.C. § 3117(a), provides
17 in pertinent part:

18 Local residents ... aggrieved by a failure of
19 the State ... to provide for the priority for
20 subsistence uses set forth in section 3114 of
21 this title (or with respect to the State as
22 set forth in a State law of general applica-
23 bility if the State has fulfilled the
24 requirements of section 3115(d) of this
25 title) may ... file a civil action in the
26 United States District Court for the District
of Alaska to require such actions to be taken
as are necessary to provide for the priority.
...In a civil action filed against the State,
the court shall provide relief, other than
preliminary relief, by directing the State to
submit regulations which satisfy the require-
ments of section 3114 of this title; when
approved by the court, such regulations shall
be incorporated as part of the final judicial
order, and such order shall be valid only for
such period of time as normally provided by
State law for the regulations at issue.

1 Defendant does not challenge this court's jurisdiction,
2 nor does it contest this court's authority under ANILCA § 807,
3 16 U.S.C. § 3117, to invoke the remedy which plaintiffs seek in
4 the event that the Board of Game regulations are found deficient
5 or unlawful. It is therefore this court's duty to determine
6 whether or not the Board of Game has failed to afford subsistence
7 uses of moose and caribou the priority to which these uses are
8 legally entitled and, if so, to require defendant, through its
9 Board of Game, to adopt and to submit new regulations to the
10 court for review.

11 Section 807 of ANILCA, 16 U.S.C. § 3117, does not
12 prescribe any particular mode of analysis for an inquiry into the
13 consistency of state rulemaking with the State's general law on
14 subsistence. Since both ANILCA § 805(d), 16 U.S.C. § 3115(d),
15 and AS 16.05.255(a) expressly contemplate a formal rulemaking
16 process, and since it is abundantly clear, from the record before
17 the court, that the State of Alaska undertook to employ a formal
18 rulemaking process as required by AS 16.05.255(a), the court
19 selects as the appropriate mode or scope of review that employed
20 in analogous federal proceedings for the review of formal rule-
21 making undertaken by federal agencies.⁷ Thus, "rulemaking must

22 -----
23
24 ⁷ The court recognizes that the State does not have the
25 status of a federal agency. Kenaitze Indian Tribe v. State
26 of Alaska, 860 F.2d 312, 313-14 (9th Cir. 1988). The scope
of review here adopted is appropriate to the state's status
as a "separate sovereign". Id. at 314.

1 be set aside if arbitrary, capricious, or an abuse of discre-
2 tion." Citizens to Preserve Overton Park, Inc. v. Volpe,
3 401 U.S. 402, 413-14 (1971); American Tunaboat Association v.
4 Baldrige, 738 F.2d 1013, 1016 (9th Cir. 1984). In the latter
5 case, the Ninth Circuit Court of Appeals elaborated on the scope
6 of review in cases such as this as follows:

7 Despite the narrow scope of review under
8 this standard and the broad discretion
9 afforded NOAA in administering the MMPA, we
10 affirm the decision of the district court.
11 In doing so, we have in mind the rule that,
12 even though an agency decision may have been
13 supported by substantial evidence, where
14 other evidence in the record detracts from
15 that relied upon by the agency we may prop-
16 erly find the agency rule was arbitrary and
17 capricious.

18 Id. at 1016.

19 More generally, but also appropriate to this case,
20 Professor Davis in his text addressed the issues which might
21 arise with regard to legislative rulemaking (and plainly the
22 regulations with which we deal are such) as follows:

23 Whenever a legislative body has delegated
24 power to an agency to make rules having force
25 of law (whether or not the delegation is
26 explicit) the rules the agency makes pursuant
to the granted power have the same force as a
statute if they are valid, and they are valid
if they are constitutional, within the
granted power, and issued pursuant to proper
procedure; a court may no more substitute its
judgment as to the content of a legislative
rule than it may substitute its judgment as
to the content of a statute.

K.C. Davis, Administrative Law & Government at 119 (2d ed. 1975).

1 In this case, the challenge is not a constitutional
2 one. Rather, the issues presented here have to do with whether
3 or not the Board of Game regulations imposing seasons and bag
4 limits upon subsistence hunters are or are not "within the grant
5 of power" accorded the Board of Game by Alaska's second subsis-
6 tence law. Id. The case also presents issues of whether or not
7 the Board of Game failed to use proper procedures. The court's
8 point of reference for purposes of evaluating the Board of Game
9 regulations is Alaska's second subsistence law because, as dis-
10 cussed in the above background material, the State's regula-
11 tory scheme has "supplant[ed] the federal regulatory scheme".
12 Kenaitze Indian Tribe, at 314. Regulations which are not within
13 such grant are unlawful and must be enjoined as required by
14 ANILCA § 807(a), 16 U.S.C. § 1317(a).

15
16
17 B.

18 History of Adoption of
19 Bag Limits & Seasons for Lime Village

20 The underpinnings for defendant's motion for summary
21 judgment on the issue of the lawfulness of the Board of Game's
22 regulations pertaining to the taking of moose and caribou by
23 plaintiffs are to be found in state law and the record of pro-
24 ceedings before the Board of Game. There is no disagreement
25 between the parties as regards the makeup of that administrative
26

1 record which consists of both transcribed Board proceedings and
2 exhibits.⁸

3 The Alaska Board of Game is established for the pur-
4 poses of "conservation and development", and is composed of seven
5

6 -----
7 8 During the course of its analysis of the Board of Game
8 proceedings, the court became uncertain as to whether
9 certain of the exhibits before the court were actually
10 before the Board of Game. Since the court's task is to
11 evaluate the work of the Board of Game and the consistency
12 of that work with state law, it is not appropriate (except
13 in unusual circumstances and for good cause shown) that the
14 court consider evidence which the Board of Game did not have
15 an opportunity to consider during the course of its proceed-
16 ings. Counsel have informally advised the court that the
17 Board of Game considered the following State exhibits now
18 before the court in promulgating the regulations in ques-
19 tion: State's Exhibits 1 through 5, 11, 12, 15 through 22,
20 and 24 through 27, and plaintiffs' Exhibits 5 and 6 and 16
21 through 22 were before the Board of Game. Additionally, a
22 report entitled "Land Use and Economy of Lime Village",
23 Technical Paper No. 80 of the Alaska Department of Fish &
24 Game, Division of Subsistence, by Priscilla Russell Kari,
25 (the "Kari Report" herein) was before the Board of Game and
26 has been considered to be plaintiff's Exhibit 1. The Kari
Report was submitted to the court as a part of plaintiffs'
motion for certification of the residents of Lime Village as
a class. This document is probably the most important
source of background data available to the Board of Game
during its consideration of the regulations in question.
With regard to these exhibits, the reader must understand
that there were ongoing proceedings before the Board of Game
from 1985 through April, 1987. The court deems it necessary
and appropriate that the continuum of this process be under-
stood in evaluating the final regulations of the Board of
Game which are under direct consideration by the court. The
State has also submitted as exhibits certain of the regula-
tions which the Board of Game adopted from time to time here
pertinent (Exhibits 9, 10, and 14) and the findings of the
Board of Game in connection with certain of these regula-
tions (State's Exhibit 14). Certain of the exhibits
(State's Exhibits 6 through 8) were not considered by the
Board of Game. Exhibits 6 and 8 are depositions taken in
this case which were reviewed by the court solely for
background purposes.

1 members. AS 16.05.221(b). The board members are not state
2 employees, and meet two or three times a year to adopt hunting
3 regulations. The Board of Game is distinct from the Alaska
4 Department of Fish & Game which is a full-time state agency, the
5 powers and duties of which are set out in general in AS 16.05.020
6 and AS 16.05.050. The department has within it a number of divi-
7 sions, including the Division of Game and the Division of Sub-
8 sistence. The responsibilities of those divisions generally
9 consist of compiling biological information about the resources,
10 and to some extent about the harvest of resources, and providing
11 that information to the Board of Game. The Division of Subsis-
12 tence is statutorily charged with conducting socio-economic and
13 resource use research, the data from which is provided to the
14 Board of Game to assist it in making regulatory decisions.
15 AS 16.05.094.

16 ANILCA § 205(d), 16 U.S.C. § 3115(d), mandates that any
17 Alaska general subsistence law make provision for advisory
18 committees and regional councils, and board consideration of
19 their recommendations. In 5 AAC § 96, the joint Boards of
20 Fisheries and Game have established a system of advisory commit-
21 tees throughout the state, pursuant to their authority under
22 AS 16.05.260. There are currently approximately 75 advisory
23 committees which hold meetings and provide a vehicle for public
24 input to the board process. Individuals are able to testify or
25 submit written comments to the committees directly. 5 AAC
26 §§ 96.021 and -.050. The advisory committees are permanent

1 committees established at geographic locations throughout the
2 state, sometimes serving more than one community, with specified
3 representation from their constituent communities.

4 The joint Boards of Fisheries and Game have also
5 established six fish and game regional councils, composed of the
6 chairmen of the advisory committees within each region. 5 AAC
7 § 96.220. The specified functions of the councils include
8 holding public meetings to provide a forum for, and to assist the
9 advisory committees in, obtaining opinions and recommendations
10 from people interested in fish and wildlife matters "so as to
11 achieve the greatest possible local participation in the deci-
12 sion-making process." 5 AAC § 96.250(b). If a regional council
13 makes a recommendation to the board concerning subsistence uses,
14 the board should implement that recommendation unless it deter-
15 mines that it is not supported by substantial evidence presented
16 during the board meeting, violates recognized principles of
17 conservation, or would be detrimental to subsistence. 5 AAC
18 § 96.610(e).⁹

19 The format of the regulatory cycle of the Board of Game
20 follows generally the same pattern for each meeting. 5 AAC
21 § 96.610. Certain kinds of regulations are open by the board for
22 review and, several months before the meeting date, the Board of
23 Game puts out a "call for proposals" to the public which is dis-

24 -----
25 ⁹ This special deference to regional council recommenda-
26 tions mirrors ANILCA § 805(c), 16 U.S.C. § 3115(c).

1 tributed to the advisory committees, and to any other interested
2 individuals or groups. A period of time follows during which the
3 public, including the advisory committees, can submit proposals
4 for the Board of Game either to modify or repeal existing regula-
5 tions or to adopt new regulations. The advisory committees meet
6 during that time period to develop any proposals to submit. The
7 proposals are transmitted to the department which assembles a
8 proposal packet and sends those back out to the public and the
9 advisory committees for review and comment. Written comments on
10 the proposals may be submitted once the proposal packet has been
11 distributed. The advisory committees generally have another set
12 of meetings during this period to review those proposals and to
13 develop positions on them. This proposal packet is in addition
14 to the legal notice required by the state Administrative Proce-
15 dure Act, AS 44.62.190.

16 The Board of Game meetings are organized largely on a
17 regional basis, so that people are able to talk about all the
18 different species that occur in a particular region, and not have
19 to remain at the location of the meeting for its entire duration.
20 In proceeding through each geographic area of the state during a
21 meeting, the board follows the same general procedure. Reports
22 are given by the department, oral public testimony is taken, and
23 board deliberations begin.

24 Shortly after this lawsuit was filed, attorneys for
25 plaintiffs submitted a proposal to the Board of Game for consid-
26 eration during its March 1985 meeting. The proposal read:

1 In order to provide for subsistence uses, it
2 is proposed that with respect to moose and
3 caribou there be no closed season and no
individual bag limits for those domiciled in
Lime Village in Unit 19.

4 The justification for the proposal was the Kari Report (plain-
5 tiffs' Exhibit 1; see footnote 8) and that report was available
6 to and considered by the Board of Game during the March meeting.
7 Plaintiffs' attorneys participated extensively in the Board of
8 Game proceedings.

9 At the March 1985 meeting, the Board of Game was
10 operating under the Madison decision pursuant to which, under
11 Alaska's first subsistence law, subsistence uses of game had to
12 be authorized for both urban and rural Alaskans. The Board of
13 Game addressed the problem posed by Madison as regards meeting
14 the subsistence needs of the residents of Lime Village by
15 creating the Lime Village management area. 5 AAC § 38.500(6)(A);
16 Appendix I at 30. In support of that regulation, the Board of
17 Game adopted formal "findings". State's Exhibit 13. Based upon
18 public testimony and the Kari Report, the Board of Game found:

19 (1) that the residents of Lime Village are
20 "extremely dependent on moose and cari-
21 bou in [game management unit] 19(A)."
22 State's Exhibit 13.

23 (2) that "the 40 residents of Lime Village
24 are probably the most geographically
25 isolated and subsistence dependent
26 people in the state." Id.

1 (3) that moose and caribou were particularly
2 important to Lime Village residents and
3 that these animals "supply the highest
4 proportion of the food eaten by resi-
5 dents of the area." Id.

6 (4) that Lime Village residents have "cus-
7 tomarily harvested moose and caribou on
8 an opportunistic basis throughout the
9 year." Id.¹⁰

10 (5) that the moose populations were stable
11 and that the caribou population in the
12 area was at a high level and growing.
13 Id.

14 The Board of Game concluded that establishing a management area
15 for Lime Village would provide a reasonable opportunity for the
16 residents of Lime Village and other Alaskans to harvest moose in
17 the area, and that an increase in the caribou bag limit in the
18 area as well as an increase in the length in the moose season
19 would be a more reasonable mechanism for providing for subsis-
20 tence uses than the then current, more limited, opportunities.

21 Id.

22 -----

23 10 The Board of Game noted that the usual hunting periods
24 for moose and caribou include fall, winter, and spring, and
25 that recent short seasons in September, November, and
26 February (which were authorized by regulation) have "not
fully accommodated the opportunity for local residents to
legally obtain the moose they need." State's Exhibit 13.

1 Based on these findings, caribou hunting regulations
2 for the Lime Village management area were reviewed by the Board
3 of Game, increasing the caribou bag limit to five for Lime
4 Village residents. 5 AAC § 81.320 (Register 94 at 5-144d; Appen-
5 dix I at 23).¹¹ The caribou season remained the same, August 10
6 through March 31. With respect to moose hunting, the Board of
7 Game extended the season within the Lime Village management area
8 to be open August 10 through September 25, November 20 through
9 December 31, and February 1 through March 31, for a total of 148
10 days. 5 AAC § 81.320 (Register 94 at 5-144n; Appendix I at 16).
11 Although based upon subsistence related information, these regu-
12 lations were included in the generally applicable "big game"
13 regulations. Id.

14 In June, 1985, as a consequence of the holding in State
15 of Alaska v. Eluska, 698 P.2d 174 (Alaska Ct. App. April 12,
16 1985)¹², the Board of Game met in emergency session to adopt sub-
17 sistence regulations separate from the general hunting regula-
18 tions in order to make the closed season regulations enforceable
19 as to subsistence hunters. The interpretation of Madison--that
20 all Alaskans were eligible to participate in subsistence uses--

21 -----

22 ¹¹ The various regulations which, at times pertinent
23 hereto, have been promulgated by the Board of Game with
24 respect to the taking of moose and caribou are collected in
25 Appendix I at 14 to 32. The regulations are most easily
26 distinguished by reference to the "Register" number assigned
to each. Lime Village is located in Game Management
Unit 19A.

26 ¹² Reversed, 724 P.2d 514 (Alaska Aug. 29, 1986).

1 still applied at that time. During that meeting, the regulations
2 governing the harvesting of moose and caribou in the Lime Village
3 management area were not modified except that they were denomi-
4 nated "subsistence regulations" separate from the general hunting
5 regulations. 5 AAC §§ 88.025(2) and 88.045(2) (Register 95 at
6 ER-100 and ER-102; Appendix I at 24 and 17). These regulations
7 appear to have been subsequently republished without change as
8 permanent regulations. 5 AAC §§ 88.025(2) and 88.045(2) (Regis-
9 ter 96 at 5-166.17 and 5-166.19; Appendix I at 25 and 18).

10 Because of the adoption of Alaska's second subsistence
11 law in early 1986, an emergency meeting of the Board of Game was
12 called in May and June of 1986 to address those regulations most
13 in need of modification. At that meeting, the Board of Game
14 examined the moose regulations applicable to Lime Village.

15 Preliminarily, the Board of Game determined that, under
16 AS 16.05.940(25), Lime Village is a rural area and that the uses
17 of moose by residents of that area were customary and traditional
18 under the eight criteria outlined in 5 AAC § 99.010(b). The
19 Board of Game then discussed various modifications which could be
20 made to the moose hunting regulations under the new subsistence
21 law, which were not possible under Madison. The major difference
22 in the legal parameters was that the Board of Game again had the
23 authority to identify subsistence uses on a community or area
24 basis, and thus could once again legally authorize subsistence
25 hunting for only those residents domiciled in Lime Village,
26 rather than being required to authorize subsistence hunting for

1 all Alaskans, both rural and urban residents, who wished to par-
2 ticipate if subsistence uses were present.

3 The Board of Game modified the applicable regulations
4 by closing the Lime Village management area to hunting by persons
5 other than those domiciled within the area. Within the Lime
6 Village management area, moose hunting was allowed (open season)
7 from August 10 through September 25, and November 20 through
8 March 31, a total of 179 days. 5 AAC § 88.045(2) (Register 100
9 at 5-166.19; Appendix I at 19). Additionally, the Board of Game
10 raised the bag limit from one to two moose, and established a
11 quota for the Lime Village management area of twenty moose, ten
12 of which could be cows. Id.

13 In the finding of an emergency, which the Board of Game
14 made in order to support the emergency regulations adopted at the
15 June 1986 meeting, the Board of Game explained that:

16 [I]n light of the recent legislation, a com-
17 prehensive review of the hunting regulations
18 is ... required, to maximize enforceability,
19 and to make subsistence and other hunting
opportunities for the coming seasons as
consistent as practicable with the legisla-
ture's intent.

20 State's Exhibit 19 at 1. The Board of Game explained that it had
21 to review at that emergency meeting certain regulations which had
22 been adopted the previous year in response to the Eluska decision
23 in combination with the Madison decision, and also "regulations
24 about which public comment or Department of Fish and Game recom-
25 mendations were received since the regulations were adopted in
26 June 1985." Id. The Board of Game explained in the findings

1 that at its next regular meeting on hunting regulations, then
 2 scheduled to begin March 30, 1987, that public comment would be
 3 taken. The Board of Game acknowledged that due to the emergency
 4 nature of the meetings, decisions had been made without public
 5 comment and might require amendment. The Board of Game looked
 6 toward modifying both the emergency and other regulations in
 7 response to the new legislation and "in light of public testimony
 8 and comments from the advisory committees and regional councils
 9 at future meetings, and as more information becomes available
 10 over time." State's Exhibit 19 at 2.

11 In April 1987, the Board of Game met. Based upon the
 12 second subsistence law, the management area for Lime Village, as
 13 well as the antlerless moose and moose guttas, were repealed.
 14 Based upon the cumulative 1985-1987 record and further delibera-
 15 tions at the April meeting, the Board of Game adopted the follow-
 16 ing regulations applicable to the taking of caribou and moose by
 17 subsistence hunters in the game management area in which Lime
 18 Village is located:

<u>UNIT</u>	<u>OPEN SEASON</u>	<u>BAG LIMIT</u>
(2)		
Unit 19(A) south of the Kuskokwim River and Unit 19(B)	Residents of Lime Village: Aug. 10 - Mar. 31	Five caribou.
	Other Subsistence Hunters:	
	Aug. 10 - Oct. 31	One caribou.
	Nov. 1 - Mar. 31	Three caribou.

26 5 AAC § 88.025(2) (Register 103 at 5-166.16; Appendix I at 27).

<u>UNIT</u>	<u>OPEN SEASON</u>	<u>BAG LIMIT</u>
(2)		
Unit 19, for residents of Lime Village only	Aug. 10 - Sept. 25 Nov. 20 - Mar. 31	Two moose, only one of which may be a cow.
Unit 19(A)	Sept. 1 - Sept. 20 Nov. 20 - Nov. 30 Feb. 1 - Feb. 10	One bull. One moose.

5 AAC § 88.045(2) (Register 103 at 5-166.18; Appendix I at 20).

C.

Consistency of Regulations with State Law

The Alaska Boards of Game and Fisheries, or their equivalents, have regulated the taking of fish and game by commercial operators and by the general public in Alaska for almost thirty years. There has been significant competition between commercial interests and sport hunters and fishermen. Alaska's endorsement of the subsistence lifestyle pursuant to ANILCA has required that the state game managers deal with a new, third, competing claim upon available fish and game. This task has not been easy, as the history of the development of Alaska law regarding subsistence hunting and fishing indicates. Fish and game authorities have not only had to deal with another competing application of fish and game, but one entitled to "preference over other consumptive uses" § 6, ch. 52 SLA 1986, AS 16.05.258(c). The job of dealing with subsistence was rendered even more difficult for the Board of Game because it has been caught between the demands of the courts of the State of Alaska and the Alaska Legislature.

1 The court commends the Board of Game for its efforts to
2 fit subsistence in its proper place in light of the difficult (if
3 not impossible) situation which arose from the Madison decision.
4 Madison opened subsistence hunting and fishing to urban as well
5 as rural residents of Alaska under Alaska's first subsistence
6 law. Ch. 151, SLA 1978. The result in Madison was, for a time,
7 the last word on the subject under Alaska law; but the result was
8 totally at odds with ANILCA, which defines the subsistence uses
9 which are entitled to priority in terms of "the customary and
10 traditional uses by rural Alaska residents of wild, renewable
11 resources". ANILCA § 803, 16 U.S.C. § 3113.

12 With the enactment of Alaska's second subsistence law,
13 ch. 52, SLA 1986, the tension created by the conflicting demands
14 of Madison and ANILCA were resolved. Subsistence usage of game
15 was again the province of those living in "rural" Alaska. Sec-
16 tions 6, 10, 11, ch. 52, SLA 1986, AS 16.05.258, AS 16.05.940(25)
17 and (30).¹³ The Board of Game has now reviewed its Lime Village
18 hunting regulations twice since the latter statute was enacted.

19 As discussed hereinabove, plaintiffs claim that the
20 Board of Game regulations establishing seasons and bag limits on
21 the taking of moose and caribou are unlawful and therefore not
22 valid. The court concludes that the Lime Village hunting regula-
23 tions are indeed unlawful.

24 -----
25 ¹³ So codified in AS 16.05. In ch. 52, the definition of
26 "subsistence uses" and "rural area" were set out as
AS 16.05.940(23) and (32).

1 As already noted, AS 16.05.255(a) grants the Board of
2 Game the general authority to adopt regulations "it considers
3 advisable" on the subjects of "open and closed seasons", Sec-
4 tion 255(a)(2), and "bag limits", Section 255(a)(4). The second
5 subsistence law grants the Board of Game specific authority to
6 adopt regulations fixing "seasons [and] bag limits" with respect
7 to subsistence hunting. § 6, ch. 52, SLA 1986, AS 16.05.258(f).
8 Clearly, the Board of Game has the power to establish seasons and
9 bag limits as to the subsistence taking of moose and caribou.

10 As a predicate to issuing regulations, Alaska's second
11 subsistence law requires extensive analysis of underlying data,
12 fact-finding, and then decision-making by the Board of Game. The
13 board is required to "identify game populations ... that are
14 customarily and traditionally used for subsistence in each rural
15 area identified by the boards." § 6, ch. 52, SLA 1986,
16 AS 16.05.258(a). The board is required to find what portion, if
17 any, of game populations identified under Section 258(a) "can be
18 harvested consistent with sustained yield." Section 258(b)(1).
19 The Board of Game is then to determine how much of that harvest-
20 able game is needed to "provide a reasonable opportunity to
21 satisfy the subsistence uses [of game]." Section 258(b)(2).
22 Finally, upon completion of this evaluation process, the board is
23 to adopt regulations for each game population for which a har-
24 vestable portion is determined to exist. Applicable to the facts
25 of this case, Section 258(c) provides that:
26

1 If the harvestable portion [of the game popu-
2 lation] is not sufficient to accommodate all
3 consumptive uses of the [game] population,
4 but is sufficient to accommodate subsistence
5 uses of the [game] population, then nonwaste-
6 ful subsistence uses shall be accorded a
7 preference over other consumptive uses, and
8 the regulations shall provide a reasonable
9 opportunity to satisfy the subsistence uses.
10 If the harvestable portion is sufficient to
11 accommodate the subsistence uses of the
12 [game] population, then the boards may
13 provide for other consumptive uses of the
14 remainder of the harvestable portion.

15 The foregoing discussion suggests three areas of possible
16 inquiry with respect to the regulations adopted by the Board of
17 Game and pertaining to the taking of moose and caribou by the
18 residents of Lime Village, Alaska:

- 19 (1) Do bag limits and seasons for the taking
20 of moose and caribou on their face vio-
21 late Alaska's second subsistence law?
- 22 (2) Has the Board of Game followed the
23 required statutory analytical process in
24 adopting bag limits and seasons for the
25 taking of moose and caribou by Lime
26 Village residents?
- 27 (3) Are the game regulations in question
28 arbitrary or capricious in the light of
29 the evidence in the record?

30 The text of the current Board of Game subsistence
31 hunting regulations pertaining to the taking of caribou and moose
32 by Lime Village residents is set forth above. See also, Appen-

1 dix I at 20 and 27. These regulations make express provision for
2 "residents of Lime Village". Over the relevant period of time
3 (1980 to 1987), the regulatory provisions applicable to open
4 seasons and bag limits for the taking of moose and caribou by
5 Lime Village residents have moved in the direction of expanding
6 the seasons and the take allowed. See Appendix I at 14 to 32.

7 On their face, these regulations do not conflict with
8 Alaska's second subsistence law. That law expressly authorizes
9 utilization of seasonal and bag limitations upon subsistence
10 hunting. § 6, ch. 52, SLA 1986, AS 16.05.258(f). It is neither
11 impossible nor necessarily unlikely that the seasons or bag
12 limits as presently constituted would fail to accommodate the
13 customary and traditional uses of moose and caribou by Lime
14 Village residents, both in terms of the times of taking and the
15 quantities of meat taken. If the required analysis were per-
16 formed, and with a supporting record, the season and bag limit
17 regulations now in force would survive plaintiffs' challenge.

18 However, the court feels constrained, as a result of
19 its review of the transcripts of the Board of Game hearings which
20 are part of the record, to observe that the Board of Game must in
21 the future proceed with scrupulous care and caution in imposing
22 seasons and bag limits on subsistence hunting. Bag limits and
23 seasons are game management tools which have seen extensive use
24 in Alaska and nationally. These restrictions have typically, if
25 not universally, been used to regulate sport hunting. In this
26 case, bag limits and seasons are being applied to a very differ-

1 ent type of game use. In its purest form, the subsistence life-
2 style is quite literally the gaining of one's sustenance off the
3 land. Typically, the sport hunter does not go hungry if the
4 season ends without his taking any game or if he has taken and
5 eaten his bag limit. The subsistence hunter who is without meat
6 during a closed season or who has with his family consumed a
7 fixed bag limit will go hungry unless some other game or fish are
8 available and in season. Hunger knows nothing of seasons, nor is
9 it satisfied for long after one's bag limit has been consumed.

10 The Board of Game must be attentive to the statutory
11 definition of "subsistence hunting" and "subsistence uses".
12 §§ 10 and 11, ch. 52, SLA 1986, AS 16.05.940(29) and (30).¹⁴
13 When read together as is necessary, these terms define subsis-
14 tence hunting in terms of:

15 [N]on-commercial, customary and traditional
16 uses of wild, renewable resources by a resi-
17 dent domiciled in a rural area of the state
18 for direct personal or family consumption as
19 food ... and for the customary trade, barter,
20 or sharing for personal or family consumption

21

22 This definition is critical to the proper implementation of
23 Alaska's second subsistence law and will be discussed further
24 hereinafter. The court would emphasize at this initial stage of
25 the review that the Board of Game should not take the court's
26 foregoing comments to mean that the availability of one game

25 ¹⁴ Thus as codified. These definitions appear in Appen-
26 dix I as subsections 940(23) and 940(33). Appendix I at 9,
10.

1 population or of a fish stock is an element or a consideration
2 which may be employed to restrict or reduce the demonstrated
3 customary and traditional use of another game population.
4 Established use of moose may not be restricted solely because
5 fish are available. The Board of Game must determine separately
6 the level of subsistence usage of each game population. § 6,
7 ch. 52, SLA 1986, AS 16.05.258(b)(2).

8 If bag limits and seasons are imposed on subsistence
9 hunting, there must be substantial evidence in the record that
10 such restrictions are not inconsistent with customary and tradi-
11 tional uses of the game in question. It must be clear in the
12 record that subsistence uses will be accommodated, as regards
13 both the quantity or volume of use and the duration of the use.
14 Need is not the standard. Again, it matters not that other food
15 sources may be available at any given time or place. The stand-
16 ard is customary and traditional use of game.

17 We turn now to the second and third areas of inquiry--
18 namely, the analysis used and procedures followed by the Board of
19 Game in issuing regulations of subsistence hunting by Lime
20 Village residents and the evidentiary support for those regula-
21 tions. Based upon the following analysis, the court has con-
22 cluded that the current regulations for the subsistence hunting
23 of moose and caribou, 5 AAC § 88.025 (Register 103) and 5 AAC
24 § 88.045 (Register 103) are deficient and must be reevaluated by
25 the Board of Game.
26

1 The great bulk of the work done by the Board of Game
2 with respect to the evaluation of subsistence taking of moose and
3 caribou by Lime Village residents was accomplished between 1983
4 and 1985. State's Exhibit 1. That work culminated in the Board
5 of Game hearings of March 27 and 29, 1985. State's Exhibits 12A
6 and 12B. As a result of those hearings, the Board of Game made
7 certain findings, State's Exhibit 13, and regulations were
8 adopted fixing seasons and bag limits for the taking of moose and
9 caribou by Lime Village residents. 5 AAC § 81.320 (Register 94;
10 Appendix I at 16 and 23). Although, as discussed above, some
11 adjustments were subsequently made to the latter regulations (see
12 Appendix I at 17-20 and 24-27), the underlying evidentiary foun-
13 dation and substance of the regulations pertaining to the taking
14 of moose or caribou by Lime Village residents for subsistence
15 uses was and is to be found in the March 1985 proceedings. What
16 followed was refinement and perhaps reaction to continued
17 pressure from plaintiffs.

18 At the time when the foundational work for the regula-
19 tions in question was accomplished by the Board of Game, Alaska's
20 first subsistence law was still in force. Ch. 151, SLA 1978
21 (Appendix I at 1-5). The March 1985 proceedings of the Board of
22 Game must have been conducted under and with reference to that
23 statute, not Alaska's second subsistence law. The plaintiffs'
24 claims and the regulations now in force must be evaluated under
25 Alaska's second subsistence law which became effective June 1,
26 1986. Section 13, ch. 52, SLA 1986 (Appendix I at 11).

1 Naturally, there were substantial similarities between
2 the first and second Alaska subsistence laws inasmuch as both
3 sought to qualify the State to manage fish and wildlife on public
4 lands pursuant to ANILCA § 805(d), 16 U.S.C. § 3115(d). As dis-
5 cussed above, the first subsistence law was adopted before
6 Congress finalized and enacted ANILCA; and the second subsistence
7 law was not enacted by the Alaska Legislature until after the
8 1985 Board of Game proceedings. Not surprisingly, therefore,
9 many of the considerations which were relevant to the 1985
10 proceedings are also relevant under the second Alaska subsistence
11 law. Unfortunately, there is not an identity of considerations
12 insofar as the questions now before the court. As discussed
13 below, the court concludes, on the basis of the transcript of the
14 June 1986 Board of Game proceedings, State's Exhibits 17A and
15 17B, that the current regulations for the taking of moose and
16 caribou by Lime Village residents for subsistence purposes which
17 have their genesis in the March 1985 and June 1986 board proceed-
18 ings were not promulgated through the use of the procedural
19 analysis mandated by Alaska's second subsistence law, see § 6,
20 ch. 52, SLA 1986, AS 16.05.258, and do not have the required
21 evidentiary support.

22 Under Section 6 of Alaska's second subsistence law, the
23 Board of Game is to identify game populations "that are custom-
24 arily and traditionally used for subsistence in each rural area
25 identified by the boards." In the March 1985 proceedings, the
26 Board of Game identified moose and caribou as game populations

1 customarily and traditionally used by plaintiffs for subsistence
2 purposes. This finding is not disputed. Likewise, there is no
3 dispute in this case but that the plaintiffs are residents of and
4 that Lime Village is a rural area.

5 In March 1985, the Eoard of Game also expressly found
6 that "residents of this area have customarily harvested moose and
7 caribou on an opportunistic basis throughout the year", that
8 seasons established under prior regulations had not permitted
9 Lime Village residents to "legally obtain the moose they need",
10 and that this led to under-reporting of harvests. State's Exhib-
11 it 13. No additional evidence was taken nor were additional find-
12 ings made as to the duration of plaintiffs' customary usage of
13 moose and caribou during the June 1986 Board of Game proceedings.

14 The record now before the court does not provide an
15 adequate basis for understanding or resolving the obvious con-
16 flict between a finding that Lime Village residents customarily
17 and traditionally take moose and caribou "throughout the year"
18 and a regulation that precludes them from taking moose during
19 almost six months of the year and from taking caribou during just
20 over four months of the year.¹⁵ The court concludes that the
21 currently operative season regulations are necessarily arbitrary
22

23 ¹⁵
24 In fact, the Board of Game gave consideration to the
25 availability of other food sources in restricting the taking
26 of moose. State's Exhibit 17B at 234. As discussed herein-
above at page 32, need or other food sources are not appro-
priate considerations in determining customary and tradi-
tional use of game.

1 for they substantially fail to accommodate what the board has
2 determined to be the customary and traditional use of moose and
3 caribou for subsistence purposes without first eliminating other
4 consumptive uses. § 6, ch. 52, SLA 1986, AS 16.05.258(c).

5 Much the same analysis applies to the Board of Game's
6 adoption of bag limits; however, for this discussion, the statu-
7 tory focus shifts to some further provisions of Alaska's second
8 subsistence law. See § 6, ch. 52, SLA 1986, AS 16.05.258(b).
9 Section 258(b) requires that the Board of Game determine both
10 acceptable game harvest levels and the portion of those harvests
11 needed to satisfy subsistence uses.

12 Despite the fact that the March 1985 Board of Game
13 proceedings predated the second Alaska subsistence law, the board
14 did take evidence on and discuss harvest levels. Understandably,
15 the Board of Game did not make the express numerical findings
16 which the second Alaska subsistence law requires. It did find
17 that moose populations in the Lime Village area were of "moderate
18 density and ... relatively stable". State's Exhibit 13. It
19 found that caribou populations were at "high levels and [have]
20 been growing in recent years." State's Exhibit 13.

21 The June 1986 Board of Game proceedings did not produce
22 additional evidence as to harvest levels. No finding as to
23 appropriate harvest levels for moose or caribou were made. The
24 Board of Game appears to have adopted its 1986 revised moose and
25 caribou regulations on the basis of the above generalized find-
26

1 ings made in 1985 and without performing the analysis required by
2 the second subsistence law.

3 What the Board of Game clearly did not do, at either
4 the 1985 or the 1986 hearing, was come to grips with the question
5 of how much game--how many moose and caribou--were required to
6 accommodate the customary and traditional use of these game popu-
7 lations by Lime Village residents. Alaska's first subsistence
8 law did not require the same specificity concerning the level of
9 subsistence use as was required by Alaska's second subsistence
10 law. Compare § 9, ch. 151, SLA 1978, to § 6, SLA 1986,
11 AS 16.05.258(b)(2). In 1986, Alaska's second subsistence law did
12 require a finding as to "how much of the harvestable portion [of
13 moose and caribou] is needed to provide a reasonable opportunity
14 to satisfy the subsistence uses" This the Board of Game
15 failed to do.

16 Certainly it is true that the board had some evidence
17 before it in March of 1985 regarding the level of subsistence use
18 of moose and caribou by Lime Village residents. However, due to
19 a lack of findings or a clearly articulated analysis in the
20 record, it is not possible for the court to ascertain how the
21 board reached its determinations in 1985 and 1986 that the speci-
22 fied bag limits would accommodate the Lime Village subsistence
23 usage of moose and caribou. The Board of Game findings conclude
24 (at least as to caribou, but impliedly also as to moose) that the
25 established bag limits "will provide a reasonable opportunity for
26 customary levels of harvest for [Lime Village] residents".

1 State's Exhibit 13 at 2. Without a finding or other clear arti-
2 culation of the mode of analysis used as to what the subsistence
3 use levels of moose and caribou were, and a finding or analysis
4 of how those use levels were translated into bag limits, the
5 court cannot evaluate the bag limits for consistency with the
6 second Alaska subsistence law requirement that the State provide
7 adequately for customary and traditional usage of game and that
8 it permit other consumptive uses only out of the excess harvest-
9 able game beyond that which is required for subsistence uses.
10 § 6, ch. 52, SLA 1986, AS 16.05.258(c).

11 Because the Board of Game did not follow or articulate
12 its use of the statutory analytical process for adopting bag
13 limits as to subsistence hunting, those regulations are also
14 arbitrary.

15 A specific aspect of the bag limit regulations on
16 subsistence hunting by Lime Village residents requires further
17 comment. There is substantial evidence in the March 1985 record
18 that moose and caribou are taken by a few hunters who then share
19 their take with the whole community. It appears well established
20 by the record that customary and traditional uses of moose and
21 caribou have a communal aspect at Lime Village. Simply put, the
22 very young, the old, and the infirm of the community are provided
23 with meat by the healthy adult members of the community who are
24 skilled at hunting. It is not clear from the Board of Game
25 findings or the discussions of the board members how this aspect
26 of the Lime Village subsistence tradition of hunting and game-

1 sharing interrelates with bag limits. The court is concerned
2 that the established bag limits do not accommodate this tradi-
3 tional aspect of Lime Village hunting of moose and caribou.

4 The court makes specific mention of this point because
5 it is necessary for the Board of Game, in reviewing the subject
6 regulations, to give due consideration to the entirety of the
7 definition of "subsistence uses" as set out in § 10, ch. 52,
8 SLA 1986, AS 16.05.940(30).¹⁶ Such uses of game are defined in
9 terms of customary and traditional use by rural Alaska residents.
10 That definition is further qualified in a manner which is parti-
11 cularly pertinent to the foregoing discussion. The uses of game
12 which are included for subsistence and therefore for priority
13 purposes are "for direct personal or family consumption as food
14 ... and for customary ... sharing for personal or family consump-
15 tion" The Board of Game must take care to accommodate the
16 Lime Village tradition of sharing the moose and caribou they take.

17 Since the subject regulations must be reviewed, there
18 are two other subsidiary areas of concern which the court feels
19 obliged to comment upon. Firstly, the court is concerned that
20 customary and traditional use data is likely to be skewed down-
21 wards due to the fact that subsistence hunting was for some early
22 years carried on, quite probably illegally with respect to both
23 bag limits and seasons, under sport hunting regulations and most
24 recently under subsistence regulations which (by the Board of

25 -----
26 ¹⁶ See footnote 14.

1 Game's own evaluation) failed to accommodate Lime Village area
2 requirements. State's Exhibit 13. The Board of Game and the
3 Division of Subsistence of the Department of Fish & Game must do
4 their best to correct and adjust their data to take account of
5 the under-reporting which almost surely occurred as a result of
6 fear of criminal sanctions which could follow accurate reporting
7 of the taking of game for community use in excess of bag limits
8 or out of season. For their part, plaintiffs must cooperate
9 fully with regulators, through their advisory committees and
10 regional council, in making a record that will support the
11 regulations which are ultimately adopted.

12 Secondly, and although not a primary issue in this
13 case, some attention has focused upon the provisions of Alaska's
14 second subsistence law which operate when the Board of Game
15 determines that there is not sufficient harvestable game to
16 accommodate all competing uses (e.g., both subsistence and sport
17 hunting), but is adequate to accommodate subsistence uses. In
18 such event, the second subsistence law dictates priority for sub-
19 sistence uses over other uses, and further provides that regula-
20 tions "shall provide a reasonable opportunity to satisfy the
21 subsistence uses." § 6(c), ch. 52, SLA 1986, AS 16.05.258(c).

22 It is not clear to the court how the above-quoted
23 language was intended to operate, nor how (if at all) the Board
24 of Game has applied it in this case. The Board of Game did make
25 express reference to the quoted statutory language in the final
26 paragraph of its April 4, 1985, findings. State's Exhibit 13.

1 The court understands that the determination of the quantity of
2 game which may be harvested consistent with recognized scientific
3 principles of game management involves professional judgment
4 based upon surveys which cannot be exact or calculated with math-
5 ematical precision. The court further understands that success-
6 ful hunting is partly skill and partly chance. It follows that
7 subsistence hunters cannot be guaranteed that they will locate
8 some predetermined number of moose or caribou in a given area and
9 take them in a given period of time. All of the variables--the
10 predictions, the skill, and chance--impact actual results. If
11 the quoted language is reflective of the vagaries of the fore-
12 going variables, it is no cause for particular concern at this
13 time. However, if that language is meant to have a more specific
14 meaning or impact on subsistence hunting, then the Board of Game
15 must take care to evaluate and articulate the meaning they
16 attribute to this language and take care that its implementation
17 does not adversely impact the preference to which subsistence
18 hunting is entitled under Alaska's second subsistence law.

19 D.

20 Conclusion

21 On the basis of the extensive briefing by both plain-
22 tiffs and defendant on the State's motion for summary judgment,
23 and in consideration of the nature of these proceedings (review
24 of administrative rulemaking), the court is in a position as dis-
25 cussed above to rule on plaintiffs' claims. The court concludes
26 that plaintiffs are entitled to the declaratory relief they seek

1 with respect to 5 AAC §§ 88.025 and -.045. The current version
2 of these regulations, as well as their precursors (including the
3 1985 version, 5 AAC § 81.320), were not adopted in conformity
4 with § 6, ch. 52, SLA 1986, AS 16.05.258. They impose seasons
5 not consistent with the board's findings as to established
6 customs of the people of Lime Village, and thereby unacceptably
7 restrict the preference for subsistence uses dictated by § 6,
8 ch. 52, SLA 1986, AS 16.05.258. The regulations impose bag
9 limits which were not demonstrably of a size sufficient to accom-
10 modate the customary taking of moose or caribou at Lime Village.
11 The Board of Game shall review its subsistence hunting regula-
12 tions for Lime Village, Alaska, and shall submit to the court for
13 review reenacted subsistence hunting regulations in accordance
14 with Alaska's second subsistence law and this decision.

15 In the absence of evidence of imminent, irreparable
16 harm to plaintiffs, the court declines to enter an injunction
17 against the enforcement of 5 AAC §§ 88.025 and -.045 at this
18 time. The court does, of course, retain jurisdiction of this
19 matter under ANILCA § 807(a), 16 U.S.C. § 3117(a), and, upon
20 request of the plaintiffs, the court will review its ruling as to
21 injunctive relief if the State has not submitted revised regula-
22 tions by June 15, 1989.

23 II.

24 Taking of Antlerless Moose; Lime Village Management Area

25 By its motion to dismiss, the State in substance argues
26 that the application to plaintiffs of AS 16.05.780 concerning the

1 taking of antlerless moose and 5 AAC § 88.500(6)(A) establishing
2 the boundaries of the Lime Village management area present issues
3 which were either moot or not ripe for judicial review. The
4 motion is opposed by plaintiffs.

5 The Alaska Board of Game, at its meeting of April 1987,
6 repealed 5 AAC § 88.500(6)(A). Accordingly, plaintiffs' chal-
7 lenge of that regulation is indeed rendered moot.

8 The situation as regards AS 16.05.780, the antlerless
9 moose statute, presents a slightly different problem. By Sec-
10 tion 780 of the Alaska game laws, it is provided that:

11 (a) The taking of antlerless moose in any
12 game management unit or subunit or a portion
13 of a unit or subunit is prohibited except
14 that antlerless moose may be taken only under
15 regulations adopted under (b) of this section
16 after

17 (1) the department recommends the season
18 be opened in that year, based on biological
19 evidence, and

20 (2) a majority of active local advisory
21 committees for that unit or subunit have
22 recommended an opening for that year, after
23 each has taken a vote and a majority of the
24 members of those committees have voted in the
25 affirmative.

26 (b) Pursuant to (a) of this section the
board, in its regularly scheduled annual game
board meeting, may adopt regulations for the
taking of antlerless moose in any game man-
agement unit or subunit in any year.

This statute was enacted prior to ANILCA and the
state's election to assume responsibility for the management of
game in Alaska consistent with ANILCA. The state concedes that
it is unclear how the provisions of Alaska's second subsistence

1 law, and the antlerless moose statute are to interact. State's
2 Memorandum in Support of Motions, March 17, 1987, at 31-32.
3 However, counsel for the State further asserts that:

4 The antlerless moose statute must be imple-
5 mented by the advisory committees and the
6 board [of game] in a manner consistent with
7 the mandate that customary and traditional
8 uses in rural Alaska are to be authorized
9 unless sustained yield or subsistence uses
10 themselves would be jeopardized.

11 Id. at 32.

12 The court has hereinabove ordered a review of subsis-
13 tence hunting regulations pertaining to the taking of moose for
14 subsistence purposes. The court takes counsel's assertion to
15 mean that the State will, in further analysis of its regulation
16 of the taking of moose for subsistence purposes, interpret
17 AS 16.05.780 in a fashion which will prevent subsistence users of
18 moose from losing the preference to which they are entitled under
19 § 6, ch. 52, SLA 1986, AS 16.05.258(c).

20 As plaintiffs point out, the antlerless moose statute,
21 unlike the management area regulation, remains in force and
22 presumptively binding upon the Board of Game. Thus the issue
23 presented regarding AS 16.05.780 is not moot; neither, however,
24 is it ripe for a decision.

25 The antlerless moose issue is not ripe for decision due
26 to the court's holding that the Board of Game's current regula-
27 tions pertaining to the taking of moose do not pass muster under
28 Alaska's second subsistence law. Stated somewhat differently,
29 because extant season and bag limit regulations concerning the

1 taking of moose must be reviewed by the Board of Game and poten-
2 tially replaced with new regulations, it is simply not possible
3 for the court to discern whether AS 16.05.780 will have any
4 future adverse impact upon the preference to which subsistence
5 moose hunting is entitled. If the bag limits adopted by the
6 Board of Game in furtherance of this decision are constructed so
7 as to apply Alaska's generally applicable game laws in a fashion
8 consistent with Alaska's second subsistence law, then the plain-
9 tiffs may well have no objection based upon AS 16.05.780.
10 Conversely, it is conceivable that in reviewing and/or revising
11 moose seasons and bag limits, the Board of Game might in fact
12 apply the antlerless moose statute in a fashion which would
13 arguably deprive plaintiffs of their subsistence rights. In the
14 latter event, the plaintiffs may present their arguments in the
15 light of the revised regulations for the subsistence taking of
16 moose.

17 Thus, in carrying out this court's order, the Board of
18 Game must be on notice that its treatment of the taking of
19 antlerless moose for subsistence purposes will come under scru-
20 tiny. The board must, as counsel represents it will, permit on a
21 preference basis the taking of antlerless moose consistent with
22 AS 16.05.258.

23 A word must be said as regards the State's qualifica-
24 tion that antlerless moose seasons would be allowed "where no
25 biological problem would exist". State's Memorandum in Support
26 of Motions, March 17, 1987, at 33. With regard to any portion of

1 a ~~wildlife~~ population (which the court understands to include
2 antlerless moose), the taking of which must be restricted for
3 conservation purposes, all other uses must be reduced or pro-
4 scribed before subsistence use is restricted. § 6(c), ch. 52,
5 SLA 1986, AS 16.05.258(c). The limiting or restricting of all
6 consumptive uses including subsistence uses in an equal or
7 roughly equal fashion is unlawful. An established subsistence
8 use of a particular wildlife population must be afforded its
9 statutory preference, and such use may be curtailed or proscribed
10 only as a last resort and then only in accordance with § 6(c) of
11 Alaska's second subsistence law. AS 16.05.258(c).

12 The State's motion to dismiss is granted as regards
13 State Regulation 5 AAC § 88.500(6)(A). The State's motion to
14 dismiss, as well as the plaintiffs' supplemental motion for
15 partial summary judgment as to the antlerless moose statute,
16 AS 16.05.780, are both denied; subject, however, to the court's
17 declaration of the State's obligation as enunciated above to
18 apply the antlerless moose statute in conformity with Alaska's
19 second subsistence law.

20 III.

21 No Subsistence Defense

22 As discussed at length hereinabove, Alaska's second
23 subsistence law created a preference for customary and tradi-
24 tional uses of game and made provision for the adoption of
25 regulations to effect this right. § 6, ch. 52, SLA 1986;
26 AS 16.05.258(f).

1 Alaska's second subsistence law further provided that:

2 In a prosecution for the taking of fish or
3 game in violation of a statute or regulation,
4 it is not a defense that the taking was done
5 for subsistence uses.

6 § 7, ch. 52, SLA 1986; AS 16.05.259.¹⁷

7 By motion for partial summary judgment, plaintiffs con-
8 tend that Section 7 is null and void by reason of the Supremacy
9 Clause of the United States Constitution.¹⁸ The motion is
10 opposed by defendant. For the reasons discussed below, plain-
11 tiffs' motion for partial summary judgment with respect to § 7,
12 ch. 52, SLA 1986, AS 16.05.259, is in substance granted.

13 Plaintiffs' Supremacy Clause argument must, however, be
14 rejected. ANILCA § 804 most certainly creates federal rights
15 which would ordinarily supersede any conflicting state law provi-
16 sion. However, in ANILCA Congress made express provision for

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18 ¹⁷ Section 7 of ch. 52, SLA 1986, was added to AS 16.05 by
19 the Alaska Legislature with the expectation that it would be
20 codified as "Sec. 16.05.261". This provision was renumbered
21 by the codifier as AS 16.05.259. To avoid confusion, the
22 "no subsistence defense" statute is herein sometimes
23 referred to as "Section 7".

24 ¹⁸ Article VI of the United States Constitution provides
25 in pertinent part that:

26 This Constitution, and the Laws of the United
States which shall be made in Pursuance
thereof; and all Treaties made, or which
shall be made, under the Authority of the
United States, shall be the supreme Law of
the Land; and the Judges in every State shall
be bound thereby, any Thing in the Constitu-
tion or Laws of any State to the Contrary
notwithstanding.

1 state law to be substituted for ANILCA Sections 803, 804, and
2 805(a)-(c), ANILCA § 805(d), 16 U.S.C. § 3115(d). As discussed
3 above, the State of Alaska has adopted a state law that has been
4 recognized as a substitute for ANILCA. Kenaitze Indian Tribe v.
5 State of Alaska, 860 F.2d 312, 314 (9th Cir. 1988). Plaintiffs
6 have not argued that the preference terms of Alaska's second
7 subsistence law is in any respect in conflict with Sections 803,
8 804, or 805 of ANILCA. 16 U.S.C. §§ 3113, 3114, 3115. Congress
9 understood and expected that the subsistence hunting priority
10 created by ANILCA would be effected by a "State rulemaking
11 authority". ANILCA § 805(d), 16 U.S.C. § 3115(d). The pertinent
12 part of § 6 (AS 16.05.258(c)) provides:

13 (c) The boards shall adopt subsistence
14 fishing and subsistence hunting regulations
15 for each stock and population for which a
harvestable portion is determined to exist
under (b)(1) of this section.

16 Alaska's decision to adopt regulations covering the full scope of
17 the subsistence right (that is, to require all subsistence hunt-
18 ing to be within and pursuant to regulation) is not inconsistent
19 with ANILCA when, by necessary implication (§ 6, ch. 52,
20 SLA 1986, AS 16.05.258(c)), those regulations are required to be
21 consistent with Alaska's equivalent of ANILCA § 804. Because the
22 regulations must be coextensive with the subsistence right, the
23 "no subsistence defense" (whatever it was intended to mean--a
24 subject to be taken up below) does not diminish the subsistence
25 hunting rights created under ANILCA and Alaska's second subsis-
26 tence law.

1 What should be, and presumably is, important to plain-
2 tiffs is that they have the opportunity to challenge the regula-
3 tions which are promulgated for the purpose of giving effect to
4 subsistence rights. Plaintiffs believe that § 7, ch. 52, SLA
5 1986:

6 [U]nambiguously and without exception, pre-
7 cludes any defendant in a prosecution for
8 violating a fish or game statute or regula-
9 tion from defending the prosecution on the
ground that the statute or regulation being
applied violates either the state or federal
subsistence laws.

10 Plaintiffs' Brief in Support of Motion for Partial Summary
11 Judgment at 19. For its part, the State argues similarly, urging
12 that plaintiffs' remedy as regards regulations adopted by the
13 Board of Game is a civil action such as this, not a subsistence
14 defense to the criminal prosecution.

15 Clearly, plaintiffs have the remedy of a civil action
16 such as this available to them under ANILCA. However, a civil
17 action is not the only means of challenging state subsistence
18 regulations, and the court is of the opinion that neither the
19 Alaska Legislature nor the Alaska appellate courts have said
20 otherwise, nor does ANILCA provide otherwise.

21 It must be said at the outset that § 7, ch. 52,
22 SLA 1986, AS 16.05.259, is not unambiguous. Both plaintiffs and
23 defendant read Section 7 to say that a defendant charged with
24 hunting violations may not argue that the regulation under which
25 he is charged fails to afford him the statutory subsistence
26 rights that the legislature intended. The words used could mean

1 that. However, the words employed by the Alaska Legislature in
2 creating the "no subsistence defense" could also mean that a
3 defendant may not argue for some kind of right in gross outside
4 of and apart from validly enacted subsistence hunting regula-
5 tions. The latter meaning is suggested, if not required, given
6 the circumstances under which the provision was enacted.

7 The addition of the so-called "no subsistence defense"
8 provision to Alaska's second subsistence law was the result of
9 ongoing subsistence law litigation in the courts of the State of
10 Alaska. Just after the Alaska Supreme Court concluded its work
11 in Madison, the Alaska Court of Appeals (which has jurisdiction
12 in the first instance of criminal appeals) was considering State
13 v. Eluska, 698 P.2d 174 (Alaska Ct. App. Apr. 12, 1985), re-
14 versed, 724 P.2d (Alaska Aug. 29, 1986).

15 In May 1983, after the closure of deer hunting season
16 in Game Unit 8, Mr. Eluska was found in possession of a freshly
17 killed doe. He was prosecuted for violation of 5 AAC § 81.320(6)
18 and 5 AAC § 81.140(a). The former regulation established the
19 season and bag limit for the taking of deer in Game Unit 8 for
20 the 1982-83 season. The latter regulation prohibited the posses-
21 sion of game taken in violation of AS 16 or any regulation prom-
22 ulgated thereunder. (This regulation in substance repeats the
23 provisions of AS 16.05.920(a) which is still in force.) Defen-
24 dant Eluska contended that he was a subsistence hunter and that
25 extant regulations failed to adequately provide for subsistence
26 hunting. At the time of the charges brought against Mr. Eluska,

1 there were no regulations differentiating between sport hunting
2 and subsistence hunting. The trial court held for defendant on
3 the basis that the State had failed to enact subsistence regula-
4 tions as required by AS 16.05.255(b).¹⁹ The Alaska Court of
5 Appeals in substance held for the defendant as well, and the case
6 was remanded for purposes of having the trial court reconsider
7 Mr. Eluska's subsistence defense employing the parameters set out
8 by the court of appeals.

9 The State appealed to the Alaska Supreme Court which,
10 in a split decision, reversed and remanded the case to the trial
11 court for further proceedings. The Alaska Supreme Court rejected
12 the conclusion of the Alaska Court of Appeals that AS 16.05.255(b)
13 required that separate regulations be promulgated governing sub-
14 sistence hunting and sport hunting. In so holding, the Alaska
15 Supreme Court held:

16 We find no evidence, however, of an intent to
17 grant any personal right to take or possess
18 game in the absence of such regulations.
19 Section 255(b) merely established the prior-
20 ity of subsistence uses within the regulatory
21 scheme. If the regulations adopted by the
22 Board fail to establish the desired priority,
23 it is difficult to believe that the legisla-
24 ture intended unregulated hunting to be the
25 result.

22 Eluska, 724 P.2d at 515 (emphasis in original; footnotes omit-
23 ted).

25 ¹⁹ AS 16.05.255(b) was repealed by § 12, ch. 52, SLA 1986.
26 The text of § 255(b) is reproduced in Appendix I at 2.

1 In order to understand why the "no subsistence defense"
2 provision was adopted, one must bear in mind that the Alaska
3 Legislature was considering the matter after the Alaska Court of
4 Appeals created a "subsistence defense" and before the Alaska
5 Supreme Court rejected that defense as set out above. The Court
6 of Appeals decision was rendered in April of 1985. Alaska's
7 second subsistence law, including the "no subsistence defense",
8 was enacted in early 1986 and became effective June 1, 1986.
9 § 13, ch. 52, SLA 1986. The Alaska Supreme Court decision was
10 not released until August 29, 1986. The legislative history of
11 Section 7 expressly states that the "no subsistence defense"
12 clause was a reaction to Eluska. State's Exhibit 20 at 8-9.

13 The Alaska Legislature, through enactment of §§ 6 and
14 7, ch. 52, SLA 1986, in substance said in response to the first
15 Eluska decision that: the Board of Game regulations shall
16 provide a preference for subsistence hunting and, since we have
17 made provision for subsistence hunting, a person may not subsis-
18 tence hunt or claim to have done so except as permitted by these
19 regulations. This is, of course, the same result reached by the
20 Alaska Supreme Court in the second Eluska decision under Alaska's
21 first subsistence law. As set out above, the Alaska Supreme
22 Court concluded that the legislature had not created subsistence
23 hunting rights absent or independent of Board of Game regula-
24 tions. Eluska, 724 P.2d at 515. There is no suggestion in
25 ch. 52, SLA 1986, that the intent of the legislature had changed
26 in this respect. Indeed, the above-quoted portions of the second

1 subsistence law in conjunction with the provisions of
2 AS 16.05.920(a)²⁰ can only be viewed as a reaffirmation by the
3 legislature that complete provision for the statutory preference
4 afforded subsistence hunting was to be made by regulation.

5 The context within which Section 7 was enacted strongly
6 suggests that this provision was intended to preclude a defendant
7 in a criminal proceeding from claiming a subsistence right in
8 gross outside of and apart from validly enacted subsistence hunt-
9 ing regulations. The legislative history of Section 7 reinforces
10 this conclusion. The legislature, like the Alaska Supreme Court,
11 intended to proscribe unregulated hunting.

12 The legislative history of Section 7 also sheds light
13 upon the question of whether a person charged with a subsistence
14 hunting violation may challenge the regulation he is alleged to
15 have violated based upon the contention that the regulation fails
16 to afford subsistence rights. The staff of the Senate Resources
17 Committee of the Alaska Legislature prepared a section-by-section
18 analysis of ch. 52, SLA 1986. With respect to Section 7, the
19 report reads:

20 This section does not [a]ffect
21 AS 16.05.930(b) which allows people to take
22 fish and game in case of emergency. This

23 20 AS 16.05.920(a) reads:

24 Unless permitted by AS 16.05 - AS 16.40 or by
25 regulation adopted under AS 16.05 - AS 16.40,
26 a person may not take, possess, [or]
transport ... game

1 section is also not intended to limit a
2 person's ability to challenge a regulation
3 that is unreasonable in its terms or fails to
4 provide a reasonable opportunity to satisfy
5 subsistence uses as required in proposed
6 AS 16.05.258(c). An example might be a hunt-
7 ing season on caribou that was open in a
8 particular area before or after the caribou
9 migrated through the area, but was closed
10 while the caribou were in the area. Such a
11 regulation would be unreasonable on its face
12 and would fail to provide a reasonable oppor-
13 tunity for subsistence uses as required by
14 AS 16.05.258(c).

15 State's Exhibit 20 at 9. Clearly the legislature intended that
16 defendants be permitted to challenge subsistence hunting regula-
17 tions despite the enactment of the "no subsistence defense".

18 The State's other arguments that persons charged with
19 violations of Alaska's subsistence hunting regulations should be
20 precluded from challenging those regulations are without merit.
21 Firstly, even if Section 7 were interpreted as plaintiffs and
22 defendants suggest, the legislature may not preclude a defendant
23 from challenging the statute or regulation under which he is
24 charged.²¹ See Eluska, 698 P.2d 174 (Alaska Ct. App. Apr. 12,
25 1985). K.C. Davis, Administrative Law Text § 23.05 (3d ed.
26 1972); Bernard v. Gulf Oil Co., 619 F.2d 459, 469 (5th Cir.
1980). Davis states:

21 The Eluska decisions are illustrative of such cases.
22 In Eluska, the State appears not to have contended that
23 Mr. Eluska was foreclosed from questioning the regulations
24 under which he was being prosecuted.

1 In general, a defendant in a civil or
2 criminal proceeding brought to enforce an
3 administrative order or regulation may defend
4 on the ground of invalidity of the order or
5 regulation, in absence of affirmative legis-
6 lative intent to the contrary. The natural
7 assumption is that one may not be held
8 civilly or criminally liable for violating an
9 invalid order or regulation. The tradition
10 is deeply embedded that even statutes may be
11 challenged by resisting enforcement.

12 K.C. Davis, Administrative Law Text § 23.05 at 446-447 (footnotes
13 omitted). As set out above, the intent of the Alaska Legislature
14 was that such challenges be permitted.

15 Secondly, no provision of ANILCA precludes the defen-
16 dant in a criminal case from challenging the State's subsistence
17 hunting regulations. ANILCA § 807(a) deals exclusively with
18 civil actions and creates an "exhaustion precondition" only with
19 respect to bringing a civil action. Section 807(a) does not
20 address criminal proceedings for the violation of regulations
21 promulgated by the State in furtherance of its election to assume
22 ANILCA responsibilities. Even if the exhaustion requirement were
23 applicable, there are no such administrative remedies attendant
24 to criminal proceedings.

25 Similarly, the State's position is not aided by ANILCA
26 § 807(c), 16 U.S.C. § 3117(c). Section 807(c) makes the judicial
remedy provided by Section 807(a) the exclusive "Federal judicial
remedy" for those "aggrieved by a failure of the State to provide
for the priority of subsistence uses set forth in Section 804."
Section 807(c) does not address criminal prosecutions in state
courts. Even assuming that it could do so, Congress has not

1 ~~purpose~~ to substitute a civil action such as this for the right
2 of a defendant in a criminal case to challenge the validity of
3 the statute or regulation under which he is charged.

4 Neither ANILCA nor Alaska's second subsistence law
5 preclude a defendant from challenging the validity of a hunting
6 regulation as a defense to a criminal prosecution.²²

7 The State's suggestion that this court's rejection of
8 Section 7 as a basis for precluding challenges to subsistence
9 regulations will lead to chaos is essentially an emotional argu-

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11 22

12 Not before this court, and therefore not addressed or
13 considered, is the situation where a person is charged with
14 a game violation other than one based upon subsistence
15 hunting, where the defendant seeks to defend on the basis of
16 a claim that he was subsistence hunting. If one were so
17 charged and could demonstrate that he was entitled to the
18 benefit of a specific subsistence hunting regulation, this
19 would appear to be an adequate defense. But suppose, for
20 the sake of discussion, that a resident of rural Alaska were
21 to take a moose contrary to sport hunting regulations and in
22 an area where there was no subsistence hunting regulation
23 permitting the taking of such wild game. Seemingly this
24 would present the identical situation as arose in Eluska.

25 This court shares the concern of the Alaska Supreme
26 Court that assertion of a subsistence defense in a case
where there is no applicable subsistence regulation, if
permitted, would result in unregulated hunting which could
in the long run be contrary to the purposes of ANILCA and
Alaska's second subsistence law. Such a case will not arise
in the future if advisory committees, regional councils, and
the Board of Game operate as they are intended to and give
full effect to § 6, ch. 52, SLA 1986, AS 16.05.258.

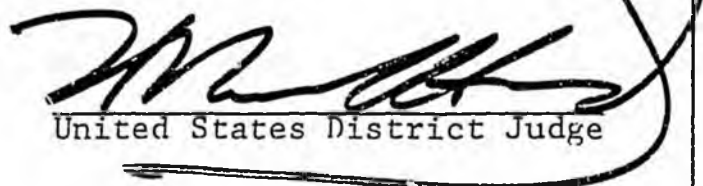
For now, and because this case does not present or
develop the latter problem, the court need not address it
and expresses no opinion as to whether or not § 7, ch. 52,
SLA 1986, AS 16.05.259, would be enforceable in a prosecu-
tion brought in the absence of an applicable subsistence
hunting regulation.

1 ment without substance. Certainly it has been difficult for the
2 State, and in particular the Board of Game, to find its way
3 through the maze of conflicting demands placed upon it as a
4 result of the several Alaska subsistence statutes and the
5 judicial decisions made under them. The court does not wish to
6 minimize the difficulty which may be presented through the
7 assertion of a subsistence defense in the form of a challenge to
8 subsistence regulations brought in the context of a criminal
9 prosecution. However, to the extent that we deal here with this
10 issue, the court believes that the State's vision of problems
11 which may come from this court's holding are exaggerated.

12 Certainly there may be a number of claims at the
13 outset. However, as a body of precedents is developed, it can
14 easily be predicted that the difficulties will diminish, at least
15 through the application of the principle of stare decisis. Once
16 a given regulatory concept has been thoroughly litigated, the
17 matter should be ended unless there are regulatory changes. The
18 court is not unmindful that recent history indicates such changes
19 may be frequent; but here also, the court is not persuaded that
20 the problem is as horrendous as the State suggests. If the work
21 of local advisory committees and regional councils and the Board
22 of Game is effectively done, and if the board's decisions are
23 well supported and documented, the temptation or need to chal-
24 lenge those regulatory decisions will be minimized along with the
25 prospects for the success of such challenges.

1 Be the foregoing as it may, the State of Alaska cannot
2 authorize the Board of Game to adopt regulations which can lead
3 to criminal sanctions and make them incontestable by defendants
4 when the State seeks to enforce the regulations. Plaintiffs and
5 defendant's contention that Section 7 (AS 16.05.259) so operates
6 is rejected on the foregoing authorities and for the foregoing
7 reasons. Plaintiffs or persons similarly situated are entitled
8 to test the validity of subsistence hunting regulations in a
9 criminal prosecution seeking to enforce those regulations.
10 Although the court's analysis of Section 7 is different from that
11 of the plaintiffs, the result favors plaintiffs and, therefore,
12 plaintiffs' motion for partial summary judgment on the "no sub-
13 sistence defense" is in substance granted.

14 DATED at Anchorage, Alaska, this 14 day of February,
15 1989.


United States District Judge

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

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March 29, 1990

The Honorable Bettye Fahrenkamp
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Fahrenkamp:

Your March 15 letter requests information about how the subsistence law was working before the McDowell decision and what management problems we expect as a result of that decision. This letter responds to that request. We are consolidating our response to your other questions in a separate letter from the Department of Law.

Before the Alaska Supreme Court decision in McDowell, state law required that subsistence uses by rural Alaskans be authorized and protected, as long as sustained yield allowed a harvest. The court ruled that the rural limitation in the law violated the Alaska Constitution; still pending is whether the mandate and priority for subsistence have also fallen because they were not severable, or whether they remain in place but apply to all Alaskans.

The decision that Alaska's rural limitation is unconstitutional may result in loss of state management of subsistence fish and game on federal land in Alaska. This problem arises because the federal subsistence law, Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), provides that subsistence uses by "rural Alaska residents" have a priority on federal land in Alaska.

Under ANILCA, those subsistence protections are to be administered by the Secretaries of Interior and Agriculture unless the state has laws of general applicability providing the rural limitation and the priority. As a result of the McDowell decision, the state no longer has the option of defining subsistence uses in a way consistent with federal law, absent a change in the state constitution.

How the process worked before McDowell

In assessing how the subsistence law worked before the McDowell decision, it seems useful to begin by describing the procedures used by the Boards of Fisheries and Game to implement the law. The boards followed a three-step process in making subsistence regulations:

1. The Joint Boards of Fisheries and Game decided which communities and areas were "rural." In state law, "rural" is defined as communities and areas in which customary and traditional, noncommercial uses of fish and game are a principal characteristic of the local economy. The board adopted a regulation listing thirteen criteria as a guide in determining rural (5 AAC 99.012). Federal law does not define rural.
2. Each board decided which rural communities or areas had "customary and traditional" uses of particular fish stocks and game populations. The boards adopted a regulation with eight criteria to guide these stock specific decisions (5 AAC 99.010(b)6). Only residents of those rural communities or areas showing a customary and traditional pattern of use of a particular fish stock or game population could participate in subsistence hunting or fishing for that particular resource.
3. Each board adopted regulations providing for subsistence uses by the residents of qualifying communities. AS 16.05.258 requires each board to adopt regulations giving a reasonable opportunity for customary and traditional uses for each game population and fish stock for which a harvestable surplus exists, with a priority over nonsubsistence uses, if necessary. This was done on a case-by-case basis, in response to proposals submitted by the public, fish and game advisory committees, and other groups.

If a fish stock or game population was in such short supply that only some subsistence users could be allowed to harvest it, the boards used three criteria to select among subsistence users. This has been called a "Tier 2" situation, in contrast with "Tier 1," where all subsistence uses could be accommodated. The three criteria for determining who can harvest at Tier 2 are (1) customary and direct dependence on the fish stock or game population as the mainstay of livelihood, (2) local residency, and (3) availability of alternative resources (AS 16.05.258). All nonsubsistence uses must be eliminated before "Tier 2" can be implemented.

Once the boards provided for customary and traditional subsistence uses, they could allocate any additional harvest surplus to other user groups. The 1986 law recognized personal use fisheries as a way to ensure that all Alaskans had an opportunity to harvest salmon and other fish by efficient means, primarily by net, dip net, and fishwheel (AS 16.05.251(d)). It also created a resident preference for taking moose, caribou, elk, and deer (AS 16.05.255).

Results of implementing the subsistence law

By 1989 the joint boards had designated 225 Alaskan communities as rural, encompassing about 110,000 people, approximately 20 percent of the state's population. Enclosure 1 lists which communities in the state were initially identified as rural. The boards had not fully completed refining the identification of rural areas at the time of the McDowell decision.

The separate boards had also largely completed a first cut at deciding which fish stocks and game populations were subject to subsistence uses. Rural residents did not automatically qualify for subsistence uses. In some remote areas, the boards concluded that most fish and game were customarily and traditionally used. In other areas, where people had more recently settled, they concluded that subsistence uses did not occur. For example, in some rural areas, they decided that sheep populations were not subject to subsistence uses. Enclosure 2 lists the game populations and fish stocks which the boards concluded were customarily and traditionally used, and the communities and areas which qualified for those uses.

In many cases the Board of Game decided that existing general hunting regulations provided sufficient opportunity for subsistence. In these cases they adopted parallel subsistence hunting regulations. In some areas where demand for wildlife was high, longer seasons, larger bag limits, or other changes in regulations were provided for subsistence use of selected species. Most of these advantages were in caribou, dall sheep, and moose regulations. Enclosure 3 lists hunts where subsistence regulations differ from general hunting regulations.

Review of this list shows that subsistence and resident hunting regulations are identical in more than half the game management units in the state. In 1989 there were only two game populations in the state limited to subsistence hunting only. These were the GMU 1D moose hunt, near Haines in southeast Alaska, and the moose hunt in the Minto Management area, a portion of GMU 20(B), near Fairbanks. In both cases, very small moose populations can support only a very limited harvest.

Longer seasons for subsistence provided advantages in some hunts. Subsistence regulations provided 8,635 potential hunting days for caribou statewide (the total of all the open hunting seasons in all the game management units). Resident regulations provided 7,550 hunting days, or 13 percent fewer. Resident moose hunts had 25 percent fewer hunting days compared with subsistence hunts.

Subsistence regulations provided other advantages in some game management subunits. These included less restrictive regulations about horn and antler size, for example. In other subunits, the bag limit was higher for subsistence. In some subunits, a combination of regulations provided multiple advantages, such as a longer season and less restrictive antler limits.

Caribou seasons are open in 50 of Alaska's 69 game management subunits. In 31 of the hunts, there is no difference between resident and subsistence regulations. Of those where subsistence has an advantage, five have longer seasons, five have less restrictive regulations, and two have higher bag limits. Seven hunts have multiple advantages.

Moose hunting is open in 62 of the 69 subunits. In 34 there is no difference in regulations. Fifteen have longer seasons, four have higher limits, and eight have multiple advantages for subsistence.

For example, the moose season in GMU 9B, in the northern Bristol Bay watershed, opens five days earlier in September for subsistence than for the general hunt. Other regulations are identical for subsistence and other resident hunters. A December season is open to both subsistence and resident hunters.

The situation is slightly different for subsistence fisheries, which frequently have shorter seasons than sport fisheries but allow more efficient gear and more liberal bag limits. Personal use fisheries, which are open to all Alaska residents, allow the same efficient gear but typically have shorter seasons and smaller bag limits than subsistence fisheries.

One example of a situation where all uses are accommodated while protecting subsistence is the Kuskokwim River, where subsistence fishing is extremely important to local residents. Any Alaska resident may fish for salmon with nets under personal use regulations, but because of high demand and competition for kings, the personal use fishermen may only fish after July 1 and cannot use king gear.

A very low percentage of the harvestable surplus of fish and wildlife in Alaska goes to subsistence--less than 4 percent of the total fish and wildlife by weight (enclosure 4). This is an extremely important contribution to the economy of rural villages,

providing 35 to 45 million pounds of high quality, nutritious food, that would otherwise have to be purchased with the limited cash typically available in these areas of the state.

The relatively small, clearly specified set of people who qualify for subsistence uses has created predictability for management and enforcement purposes, as well as for other user groups. For this reason, implementation of subsistence regulations has created few real conflicts with sport and commercial uses.

A number of controversies and court cases have resulted from the boards' ongoing efforts to implement the subsistence law. Enclosure 5 summarizes the status of current court cases involving subsistence.

What happens to alaskan's hunting and fishing opportunities and to fish and game management after July 1?

Attorneys still disagree about many of the legal and management implications of the McDowell decision. However, they seem to agree that there will be major changes in the way fish and game is managed and allocated in Alaska. Two of the largest problems appear to be "Tier 2" management and the division of fish and wildlife management jurisdiction between state and federal agencies.

One area of legal uncertainty is whether the McDowell decision means that only the rural limitation in the state subsistence law is unconstitutional, or whether the entire statute is unconstitutional. This hinges on whether or not the rural limitation is severable. If it is not severable, then in addition to the rural limitation, the definitions and priority for subsistence fall. This would mean that the boards could still authorize subsistence fisheries at their discretion that would be open to all Alaskans, but would not have a priority over other uses. If it is severable, then all Alaskans qualify for subsistence uses, and subsistence still has a priority.

We will not know the answer to these questions until the state superior court takes further action in the McDowell case.

Tier 2 disruptions

If the rural limitation is severable from the remainder of the subsistence law and all Alaskans qualify for subsistence uses, we face the same type of management chaos and harvest disruptions for the 1990 hunting seasons that we experienced after the Madison

court decision in 1985. Any subsistence hunts or fisheries on state lands where participation must be limited in order to protect the resource would have to be managed under the Tier 2 procedures described above.

The department has conducted a preliminary assessment of which hunts and fisheries may have to be limited to Tier 2 if all Alaskans qualify for subsistence. This assessment, enclosure 6, indicates that more than 30 hunts would have to be limited to Alaskans who qualify under Tier 2 criteria. These include some of the most popular hunts in the state, including the Nelchina caribou hunt.

Tier 2 hunts would substantially reallocate game and disrupt normal hunting opportunity because permit drawings could no longer be used to decide who participates in these hunts. Instead, the Tier 2 statutory criteria would have to be applied to create a point system to rank applicants and to decide who could hunt.

Because the McDowell decision appears to mean that one of the Tier 2 criteria (local residency) is invalid, the boards and department would have to rely on the other two criteria, "direct dependence on the resource" and "availability of alternative resources" in allocating permits. Nonresidents would have to be excluded from these hunts.

Tier 2, as the department learned from its experience in 1985, is time consuming and expensive to administer. It affects big-game guiding because of the nonresident exclusions. It also results in loss of revenues to the state from nonresident licenses and tag fees. It may be necessary for the Division of Wildlife Conservation to seek supplemental funds to operate these hunts in 1990. Enclosure 7 is a paper prepared by the department describing the effects of the 1985 Tier 2 hunts.

Federal management takeover

If the state cannot provide a rural preference for subsistence, ANILCA Title VIII requires federal agencies to provide a subsistence preference on federal lands. Federal agencies are currently planning for subsistence management on federal lands beginning July 1, unless the state is able to extend the stay granted by the Alaska Supreme Court after McDowell.

Although discussions between the state and the Department of Interior are underway, the scope of federal subsistence management is still unclear. Federal land managers are just beginning to draft a federal subsistence management plan. Until it is completed and released, we can only provide a broad overview of the possible effects of federal management.

The specific effects of federal subsistence management will depend to a large extent on the position the federal government takes, or is required by the courts to take, on three major issues. These are: (1) what lands and resources they will exert jurisdiction over, (2) what communities and areas the federal agencies will define as "rural", and (3) what process they will use for adopting subsistence regulations for federal areas. Their decisions on these questions will significantly affect all Alaskans who use fish and wildlife. In addition, Alaskans may have little say in these decisions.

"Jurisdiction"

About 60 percent of Alaska is federal land. Many popular and important hunting and fishing areas in Alaska are on or adjacent to federal lands.

The federal government's jurisdiction over hunting and fishing in these areas is unclear and subject to a number of untested legal theories. At one extreme, the federal government may have very broad authority to reach out and control fish and wildlife far from federal land if necessary to protect subsistence uses on federal lands. At the other extreme, their authority may be very narrow, limited only to closing federal areas to access. It seems clear that federal agencies will regulate hunting on federal lands. For fishing, the issue is much more complicated. The federal government might initially claim relatively narrow jurisdiction and authority, and then face court challenges to determine whether ANILCA requires a broader interpretation.

Even a narrow interpretation of ANILCA, however, is likely to mean serious fish and game management problems and disruptions to users. The interlocking nature of federal, state, and private lands and waters, together with conflicting management goals, are likely to result in serious difficulty in coordinating state and federal management.

For example, the state boards may not be able to adopt regulations and authorize harvests until they know what regulations will apply on federal lands or waters. They might also have to reassess state regulations in light of each regulatory change by federal agencies. Otherwise, the state runs the risk of allowing an overharvest, which would be prohibited by the state constitution's sustained yield mandate. This problem would be exacerbated by emergency circumstances, which call for quick and effective action. This could result in the loss of harvest opportunities for Alaskans.

Alaskan hunting and fishing regulations are already complicated. Different regulations adopted by different agencies for adjacent lands are likely to seriously increase regulatory complexity. This will not only be frustrating for hunters and fishermen, but will also increase enforcement problems. In most areas of the state it is very difficult to determine where state lands end and federal lands begin. People cited for hunting or fishing violations may claim as a defense that they were confused as to what regulations apply at any given location.

Alaskans' hunting and fishing opportunities could be reduced by a federal takeover. This could occur because federal management would be less precise than state management has been, if the federal government does not adequately fund management on federal lands. This could force federal managers to be more conservative in authorizing harvests. If they do authorize harvests without adequate data, they could run the risk of overharvest.

Another potential reason for reductions in harvest opportunities are the management philosophies of the federal agencies. For example, the National Park Service (NPS) has attempted to minimize hunting and fishing, even in national preserves where those uses were authorized by Congress, by narrowly interpreting access provisions. NPS regulations closing subsistence and commercial fishing in the waters of Glacier Bay National Monument are another recent example with serious implications for both subsistence and commercial users. Other federal agencies have also demonstrated a disregard for Alaskan's uses of fish and wildlife.

Moreover, even if they initially choose to interpret ANILCA narrowly, over time the federal agencies are likely to exert jurisdiction over fish and game management on state lands and waters in cases where these resources are important for subsistence. ANILCA and its legislative history indicate Congress's intent to protect subsistence uses broadly. Together with other legal precedents, this may cause federal agencies, either through choice or court direction, to exert wider jurisdiction over fish and game. It seems safe to predict that Alaskans will be in court for many more years in order to establish the respective jurisdictions of the state and federal government over fish and wildlife, if federal agencies take over subsistence management under ANILCA.

"Rural"

During their 1985-86 contingency planning, federal agencies indicated that they would define "rural" as places smaller than 2500 in population. This straightforward population definition would be administratively convenient, but it would eliminate some places that many Alaskans and Congress agreed should have

subsistence uses, such as Bethel (4000), Barrow (3000), Nome (3100), and Kotzebue (2600). It might also include, as rural, places like Sterling (population 1700), which is only a few miles from Soldotna (population 3800) and Kenai (population 6500), and which is closely connected to those larger towns.

If federal agencies take a very narrow view of rural, they may cut out places that many agree should have subsistence uses. If they take a broad view and include more places as rural, urban Alaskan's hunting and fishing opportunities on federal lands may be more restricted.

"Federal Process"

Probably the most critical issue is who will make the decisions about hunting and fishing on federal lands, and what role the Alaskan public will have in making those decisions. As they planned to do in 1985-86, the federal agencies will probably create some type of federal subsistence board, with representation from the four major federal landowners. Federal land management policies can therefore be expected to be major forces in deciding hunting and fishing regulations.

A federal takeover is likely to accelerate the trend toward increased influence from national organizations in determining how fish and wildlife are used and managed on federal lands. Federal land managers may face greater pressure from national anti-hunting and trapping interests than the boards did in deciding hunting and fishing regulations.

We expect the federal government to initially adopt as much of the state's hunting and fishing regulations as they can. However, in areas of controversy over limited resources, they may act more conservatively by closing areas or reducing seasons or bag limits for nonsubsistence uses. We expect this to occur particularly in areas managed by the NPS, such as national preserves.

One suggestion has been for the state to contract or work out cooperative agreements with the federal government to allow the state to continue a major role in management on federal lands. While this is still being examined, it is possible that the state could contract for studies and information gathering for the federal agencies. However, it is unlikely that the state could make management decisions, in part because the federal agencies may not be able to delegate away the final decisions.

Another suggestion is that over time we will be able to develop a greater role for Alaskans and to resume state fish and game management on federal lands. One option for doing this would be

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amending ANILCA. However, the state's experience with federal statutes concerning the division of wildlife management responsibilities is not encouraging.

It is clear that under federal management Alaskans would have less say in how fish and game are managed and who gets how much. Federal regulations would be adopted under federal procedures, and would be ultimately signed off on in Washington, D.C. Alaskans would have less access to this regulatory process, compared with the state's board system, with its open public participation.

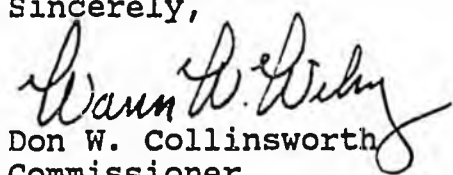
Summary

In summary, Alaska is faced with an extremely serious situation after July 1. In the short run, we face disruptions to Alaskans hunting and fishing opportunities. In the long run, we risk damage to highly valued resources, as well as even greater disruptions for users. On state lands, if all Alaskans qualify for subsistence, we will have to implement expensive and onerous Tier 2 hunts to determine which Alaskans are allowed to participate. On federal lands, federal agencies will be determining which hunts and fisheries are open, how many animals can be taken, and who gets to participate. Perhaps the greatest danger, however, is that for the first time since statehood, Alaskans will be letting the federal bureaucracy make these decisions for us.

As indicated throughout this analysis, there is tremendous uncertainty concerning the effects of the McDowell decision on fish and game management and Alaskans' uses of these resources. Because of the wide range of variables, including the fact that the federal plan is still being developed, this description of implications may be far from complete.

Please feel free to contact us for more detail on specific areas of concern.

Sincerely,



Don W. Collinsworth
Commissioner

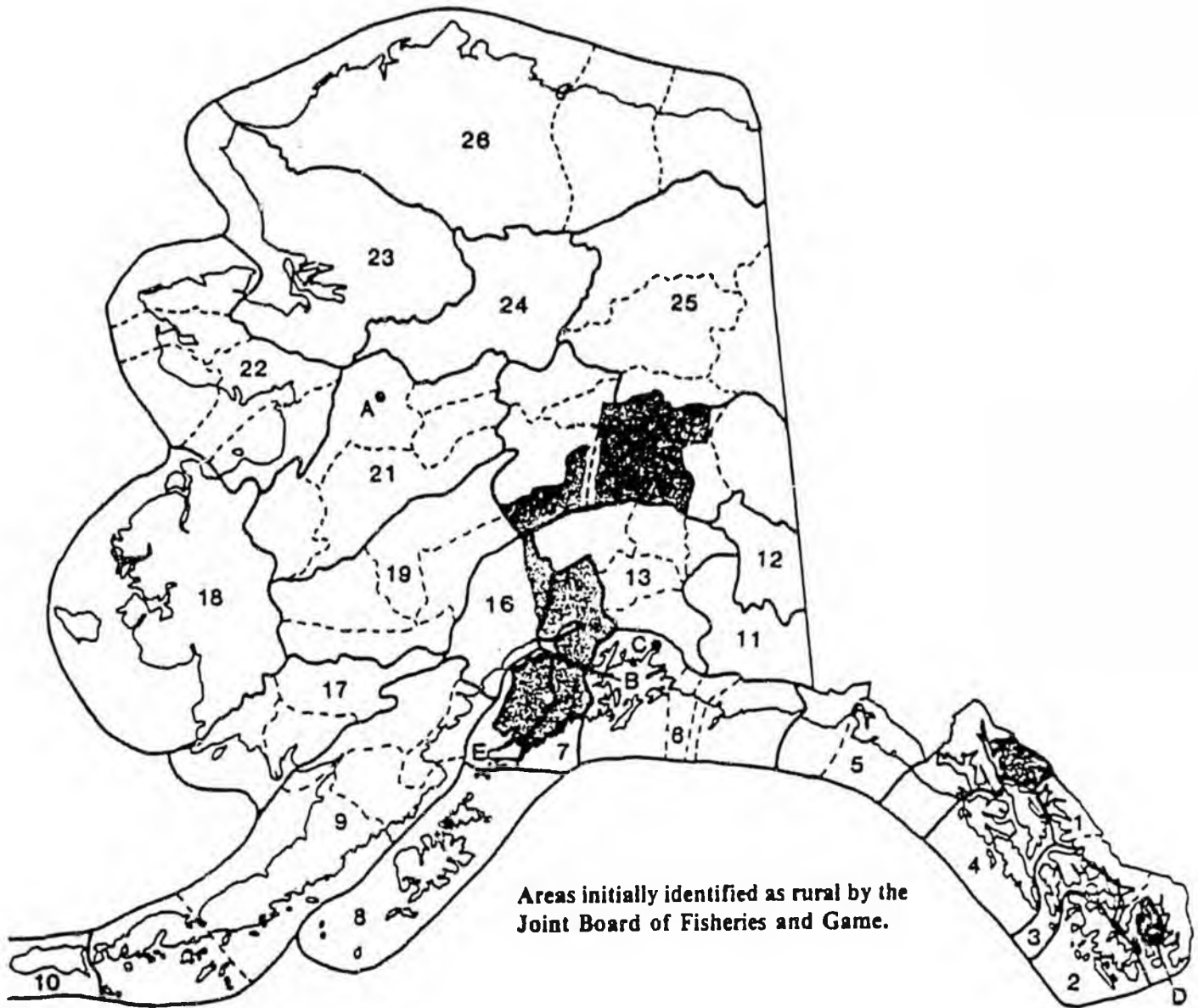
Enclosures

Senator Fahrenkamp

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cc: Senate Resources Committee members
House Resource Committee members
Department of Law
Denby Lloyd, Governor's Office
Mike Irwin, Governor's Office
Glenn Elison, FWS



Areas initially identified as rural by the Joint Board of Fisheries and Game.

■ Non-Rural

A - Galena Airforce Station within the Galena dike

B - Whittier city limits

C - Valdez city limits

□ Rural

D - Saxman city limits

E - Unit 15(C) west of a line from the northern most point of Rocky Bay to the head of Tutka Bay on the Kenai Peninsula

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Balance of Eielson Reservation Census Sub-Area	ADOL	85	132 Interior	Fairbanks Area	20B	Nonrural
Balance of Fairbanks-Northstar Census Sub-Area	ADOL	85	29634 Interior	Fairbanks Area	20A, 20B, 20F	Nonrural
Balance of Southeast Fairbanks Census area	ADOL	85	1933 Interior	Fairbanks Area	20, 12	Nonrural
Big Delta	ADOL	85	388 Interior	Fairbanks Area	20D	Nonrural
College	ADOL	85	6646 Interior	Fairbanks Area	20B	Nonrural
Delta Junction	ADOL	85	1299 Interior	Fairbanks Area	20D	Nonrural
Eielson Air Force Base	ADOL	85	4932 Interior	Fairbanks Area	20B	Nonrural
Ester	ADOL	85	285 Interior	Fairbanks Area	20B	Nonrural
Fairbanks	ADOL	85	27099 Interior	Fairbanks Area	20B	Nonrural
Fort Greely	ADOL	85	1672 Interior	Fairbanks Area	20D	Nonrural
Fox	ADOL	85	189 Interior	Fairbanks Area	20B	Nonrural
Harding Lake Census Designated Place	ADOL	85	58 Interior	Fairbanks Area	20B	Nonrural
Moose Creek Census Designated Place	ADOL	85	803 Interior	Fairbanks Area	20B	Nonrural
North Pole	ADOL	85	1640 Interior	Fairbanks Area	20B	Nonrural
Salcha	ADOL	85	533 Interior	Fairbanks Area	20B	Nonrural
Two Rivers	ADOL	85	523 Interior	Fairbanks Area	20B	Nonrural
Anchorage	ADOL	85	235269 Southcentral	Anchorage	14C	Nonrural
Balance of Matanuska-Susitna Census area	ADOL	85	26378 Southcentral	Matanuska-Susitna	13, 14, 16	Nonrural
Big Lake	ADOL	85	610 Southcentral	Matanuska-Susitna	14A	Nonrural
Bodenburg Butte Census Designated Place	ADOL	85	1232 Southcentral	Matanuska-Susitna	14A	Nonrural
CHICKALOOM	ADFG		Southcentral	Matanuska-Susitna	14A	Nonrural
Houston	ADOL	85	725 Southcentral	Matanuska-Susitna	14A	Nonrural
Montana Census Designated Place	ADOL	85	103 Southcentral	Matanuska-Susitna	14B	Nonrural
Palmer	ADOL	85	3016 Southcentral	Matanuska-Susitna	14A	Nonrural
PETERSVILLE	ADFG		Southcentral	Matanuska-Susitna	16A	Nonrural
Sutton	ADOL	85	340 Southcentral	Matanuska-Susitna	14A	Nonrural
Talkeetna	ADOL	85	269 Southcentral	Matanuska-Susitna	14B	Nonrural
TRAPPER CREEK	ADFG		Southcentral	Matanuska-Susitna	16A	Nonrural
Vasilla	ADOL	85	3666 Southcentral	Matanuska-Susitna	14A	Nonrural
Willow	ADOL	85	494 Southcentral	Matanuska-Susitna	14A	Nonrural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY				RURAL STATUS
	SOURCE	YEAR	POPULATION	REGION SUBREGION	
Valdez	ADOL	85	3271	Southcentral Prince William Sound	60 Nonrural
Whittier	ADOL	85	344	Southcentral Prince William Sound	60 Nonrural
Anchor Point	ADOL	85	327	Southcentral Upper Kenai Peninsula	15C Nonrural
Balance of Kenai-Cook Inlet Census Sub-Area	ADOL	85	12821	Southcentral Upper Kenai Peninsula	15,168,9A Nonrural
Balance of Seward Census Sub-Area	ADOL	85	303	Southcentral Upper Kenai Peninsula	7 Nonrural
Clam Gulch	ADOL	85	166	Southcentral Upper Kenai Peninsula	15C Nonrural
Cooper Landing	ADOL	85	386	Southcentral Upper Kenai Peninsula	7 Nonrural
Fritz Creek Census Designated Place	ADOL	85	1610	Southcentral Upper Kenai Peninsula	15C Nonrural
Halibut Cove	ADOL	85	52	Southcentral Upper Kenai Peninsula	15C Nonrural
Homer	ADOL	85	3632	Southcentral Upper Kenai Peninsula	15C Nonrural
Hope	ADOL	85	224	Southcentral Upper Kenai Peninsula	7 Nonrural
Jakolof Bay Census Designated Place	ADOL	85	81	Southcentral Upper Kenai Peninsula	15C Nonrural
Kachemak City	ADOL	85	338	Southcentral Upper Kenai Peninsula	15C Nonrural
Kalifornsky Census Designated Place	ADOL	85	332	Southcentral Upper Kenai Peninsula	15B Nonrural
Kasilof	ADOL	85	643	Southcentral Upper Kenai Peninsula	15B Nonrural
Kenai	ADOL	85	6518	Southcentral Upper Kenai Peninsula	15A Nonrural
Moose Pass	ADOL	85	145	Southcentral Upper Kenai Peninsula	7 Nonrural
Nikishka	ADOL	85	1630	Southcentral Upper Kenai Peninsula	15A Nonrural
Ninilchik	ADOL	85	451	Southcentral Upper Kenai Peninsula	15C Nonrural
Salamatof Census Designated Place	ADOL	85	737	Southcentral Upper Kenai Peninsula	15A Nonrural
Seward	ADOL	85	2152	Southcentral Upper Kenai Peninsula	7 Nonrural
Soldotna	ADOL	85	3818	Southcentral Upper Kenai Peninsula	15A Nonrural
Sterling	ADOL	85	1732	Southcentral Upper Kenai Peninsula	15A Nonrural
Juneau	ADOL	85	26270	Southeast Juneau	1C Nonrural
Balance of Ketchikan Census Area	ADOL	85	351	Southeast Ketchikan	1A Nonrural
Clover Pass	ADOL	85	547	Southeast Ketchikan	1A Nonrural
Herring Cove	ADOL	85	120	Southeast Ketchikan	1A Nonrural
Ketchikan	ADOL	85	7311	Southeast Ketchikan	1A Nonrural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDDEMOG.WK1)

COMMUNITY	SOURCE	POPULATION YEAR	COMMUNITY POPULATION	REGION	SUBREGION	GMU	RURAL STATUS
Ketchikan East	ADOL	85	469	Southeast	Ketchikan	1A	Nonrural
Mountain Point	ADOL	85	480	Southeast	Ketchikan	1A	Nonrural
North Tongass Highway	ADOL	85	2089	Southeast	Ketchikan	1A	Nonrural
Pennock Island	ADOL	85	109	Southeast	Ketchikan	1A	Nonrural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Anaktuvuk Pass	ADOL	85	238 Arctic	North Slope	24	Rural
Atkasuk	ADOL	85	190 Arctic	North Slope	26A	Rural
Balance of Barrow-Point Hope Census Sub-Area	ADOL	85	19 Arctic	North Slope	23, 26	Rural
Balance of Prudhoe Bay-Kaktovik Census Sub-Area	ADOL	85	101 Arctic	North Slope	25B, 26C	Rural
Barrow	ADOL	85	3075 Arctic	North Slope	26A	Rural
Cape Lisburne	ADOL	85	11 Arctic	North Slope	23, 26A	Rural
Deadhorse	ADOL	85	65 Arctic	North Slope	26B	Rural
Kaktovik	ADOL	85	209 Arctic	North Slope	26C	Rural
Nuiqsut	ADOL	85	337 Arctic	North Slope	26A	Rural
Point Hope	ADOL	85	597 Arctic	North Slope	23	Rural
Point Lay	ADOL	85	104 Arctic	North Slope	26A	Rural
Prudhoe Bay	ADOL	85	56 Arctic	North Slope	26B	Rural
Wainwright	ADOL	85	508 Arctic	North Slope	26A	Rural
Ambler	ADOL	85	255 Arctic	Northwest	23	Rural
Balance of Kobuk Census Area	ADOL	85	85 Arctic	Northwest	23	Rural
Buckland	ADOL	85	248 Arctic	Northwest	23	Rural
Deering	ADOL	85	153 Arctic	Northwest	23	Rural
Kiana	ADOL	85	392 Arctic	Northwest	23	Rural
Kivalina	ADOL	85	285 Arctic	Northwest	23	Rural
Kobuk	ADOL	85	65 Arctic	Northwest	23	Rural
Kotzebue	ADOL	85	2633 Arctic	Northwest	23	Rural
Noatak	ADOL	85	330 Arctic	Northwest	23	Rural
Noorvik	ADOL	85	529 Arctic	Northwest	23	Rural
Selawik	ADOL	85	589 Arctic	Northwest	23	Rural
Shungnak	ADOL	85	226 Arctic	Northwest	23	Rural
Balance of Nome Census area	ADOL	85	122 Arctic	Seward-Norton	22	Rural
Brevig Mission	ADOL	85	165 Arctic	Seward-Norton	22D	Rural
Diomedes	ADOL	85	158 Arctic	Seward-Norton	22E	Rural
Elim	ADOL	85	237 Arctic	Seward-Norton	22B	Rural
Gambell	ADOL	85	494 Arctic	Seward-Norton	22D	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION		COMMUNITY POPULATION	REGION	SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR					
Golovin	ADOL	85	131	Arctic	Seward-Norton	22B	Rural
Koyuk	ADOL	85	202	Arctic	Seward-Norton	22B	Rural
Nome	ADOL	85	3191	Arctic	Seward-Norton	22C	Rural
Perkinsville Census Designated Place	ADOL	85	45	Arctic	Seward-Norton	22C	Rural
Port Clarence	ADOL	85	39	Arctic	Seward-Norton	22D	Rural
Saint Michael	ADOL	85	287	Arctic	Seward-Norton	22A	Rural
Savoonga	ADOL	85	487	Arctic	Seward-Norton	22D	Rural
Shaktolik	ADOL	85	163	Arctic	Seward-Norton	22A	Rural
Shishmaref	ADOL	85	410	Arctic	Seward-Norton	22E	Rural
Stebbins	ADOL	85	372	Arctic	Seward-Norton	22A	Rural
Teller	ADOL	85	247	Arctic	Seward-Norton	22D	Rural
Unalakleet	ADOL	85	759	Arctic	Seward-Norton	22A	Rural
Wales	ADOL	85	143	Arctic	Seward-Norton	22E	Rural
White Mountain	ADOL	85	164	Arctic	Seward-Norton	22B	Rural
Anderson	ADOL	85	566	Interior	Parks Highway	20A	Rural
Healy	ADOL	85	414	Interior	Parks Highway	20C	Rural
McKinley Park Village	ADOL	85	65	Interior	Parks Highway	20C	Rural
Usibelli Mine	ADOL	85	6	Interior	Parks Highway	20A	Rural
Cantwell	ADOL	85	91	Southcentral	Parks Highway	13E	Rural
CHASE-GOLD CREEK	ADFG	87	78	Southcentral	Parks Highway	13E	Rural
Balance of McGrath-Holy Cross Census Sub-Area	ADOL	85	102	Interior	Upper Kuskokwim	19,21	Rural
LAKE WINCHUMINA	ADFG			Interior	Upper Kuskokwim	20C	Rural
McGrath	ADOL	85	509	Interior	Upper Kuskokwim	19D	Rural
MEDFRA	ADFG			Interior	Upper Kuskokwim	19D	Rural
Nikolai	ADOL	85	122	Interior	Upper Kuskokwim	19D	Rural
Takotna	ADOL	85	54	Interior	Upper Kuskokwim	19D	Rural
Tatalina Station Census Designated Place	ADOL	85	13	Interior	Upper Kuskokwim	19	Rural
Telida	ADOL	85	38	Interior	Upper Kuskokwim	19D	Rural
CHISANA	ADFG	87	13	Interior	Upper Tanana	11	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDENOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Doł Lake	ADOL	85	77 Interior	Upper Tanana	200	Rural
Healy Lake	ADOL	85	37 Interior	Upper Tanana	200	Rural
NORTH WRANGELL MOUNTAINS	ADFG		Interior	Upper Tanana	12	Rural
Northway	ADOL	85	239 Interior	Upper Tanana	12	Rural
Tanacross	ADOL	85	149 Interior	Upper Tanana	12	Rural
Tetlin	ADOL	85	89 Interior	Upper Tanana	12	Rural
Tok	ADOL	85	692 Interior	Upper Tanana	12	Rural
ALATHA	ADFG	85	Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Allakaket	ADOL	85	188 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Anvik	ADOL	85	83 Interior	Upper Yukon-Koyukuk-Lower Tanana	21E	Rural
Arctic Village	ADOL	85	132 Interior	Upper Yukon-Koyukuk-Lower Tanana	25A	Rural
Balance of Koyukuk-Mid Yukon Census Sub-Area	ADOL	85	924 Interior	Upper Yukon-Koyukuk-Lower Tanana	20,24,21	Rural
Balance of Yukon Flats Census Sub-Area	ADOL	85	41 Interior	Upper Yukon-Koyukuk-Lower Tanana	25	Rural
Beaver	ADOL	85	80 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Bettles	ADOL	85	86 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Birch Creek	ADOL	85	29 Interior	Upper Yukon-Koyukuk-Lower Tanana	25	Rural
Campion Station	ADOL	85	12 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural
Central	ADOL	85	42 Interior	Upper Yukon-Koyukuk-Lower Tanana	25C	Rural
Chalkyitsik	ADOL	85	94 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Chicken	ADOL	85	48 Interior	Upper Yukon-Koyukuk-Lower Tanana	20E	Rural
Circle	ADOL	85	94 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Eagle	ADOL	85	273 Interior	Upper Yukon-Koyukuk-Lower Tanana	20E	Rural
Fort Yukon	ADOL	85	678 Interior	Upper Yukon-Koyukuk-Lower Tanana	25D	Rural
Galena	ADOL	85	947 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural
Grayling	ADOL	85	225 Interior	Upper Yukon-Koyukuk-Lower Tanana	21E	Rural
Holy Cross	ADOL	85	238 Interior	Upper Yukon-Koyukuk-Lower Tanana	21E	Rural
Hughes	ADOL	85	92 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Huslia	ADOL	85	272 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Indian Mountain Census Designated Place	ADOL	85	13 Interior	Upper Yukon-Koyukuk-Lower Tanana	24	Rural
Kaltag	ADOL	85	278 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural
Koyukuk	ADOL	85	143 Interior	Upper Yukon-Koyukuk-Lower Tanana	21D	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION			
Manley Hot Springs	ADOL	85	88	Interior	Upper Yukon-Koyukuk-Lower Tanana 20B	Rural
Minto	ADOL	85	209	Interior	Upper Yukon-Koyukuk-Lower Tanana 20B	Rural
Menana	ADOL	85	544	Interior	Upper Yukon-Koyukuk-Lower Tanana 20A	Rural
Mulato	ADOL	85	368	Interior	Upper Yukon-Koyukuk-Lower Tanana 21D	Rural
Rampart	ADOL	85	59	Interior	Upper Yukon-Koyukuk-Lower Tanana 18	Rural
Ruby	ADOL	85	241	Interior	Upper Yukon-Koyukuk-Lower Tanana 21B	Rural
Shageluk	ADOL	85	144	Interior	Upper Yukon-Koyukuk-Lower Tanana 21E	Rural
Stevens Village	ADOL	85	97	Interior	Upper Yukon-Koyukuk-Lower Tanana 25D	Rural
Tanana	ADOL	85	425	Interior	Upper Yukon-Koyukuk-Lower Tanana 20F	Rural
Venetie	ADOL	85	237	Interior	Upper Yukon-Koyukuk-Lower Tanana 25D	Rural
WISEMAN	ADFG			Interior	Upper Yukon-Koyukuk-Lower Tanana 24	Rural
Chistochina	ADFG	87	79	Southcentral	Copper River Basin 11	Rural
Chitina	ADFG	87	35	Southcentral	Copper River Basin 13D	Rural
Copper Center	ADFG	87	493	Southcentral	Copper River Basin 13D	Rural
EAST GLENN HIGHWAY	ADFG	87	217	Southcentral	Copper River Basin 13A, 13D	Rural
Gakona	ADFG	87	209	Southcentral	Copper River Basin 13B	Rural
Glennallen	ADFG	87	469	Southcentral	Copper River Basin 13A, 13D	Rural
Gulkana	ADFG	87	67	Southcentral	Copper River Basin 13B	Rural
KENNY LAKE	ADFG	87	321	Southcentral	Copper River Basin 13D	Rural
LAKE LOUISE	ADFG	87	39	Southcentral	Copper River Basin 13A	Rural
MCCARTHY ROAD	ADFG	87	38	Southcentral	Copper River Basin 11	Rural
MENTASTA LAKE	ADFG	87	77	Southcentral	Copper River Basin 13C	Rural
MENTASTA PASS	ADFG	87	26	Southcentral	Copper River Basin 13C	Rural
NABESNA ROAD	ADFG	87	37	Southcentral	Copper River Basin 11, 12	Rural
NORTH SLANA HOMESTEAD	ADFG	87	61	Southcentral	Copper River Basin 13C	Rural
Paxson-Sourdough	ADFG	87	65	Southcentral	Copper River Basin 13B	Rural
Slana	ADFG	87	57	Southcentral	Copper River Basin 13C	Rural
SOUTH SLANA HOMESTEAD	ADFG	87	186	Southcentral	Copper River Basin 11	Rural
SOUTH WRANGELL MOUNTAINS	ADFG	87	48	Southcentral	Copper River Basin 11	Rural
Tazlina	ADFG	87	365	Southcentral	Copper River Basin 13D	Rural
Tonsina	ADFG	87	297	Southcentral	Copper River Basin 13D	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	SOURCE	POPULATION		COMMUNITY REGION	SUBREGION	GMU	RURAL STATUS
		YEAR	POPULATION				
WEST GLENN HIGHWAY	ADFG	87	281	Southcentral	Copper River Basin	13D,13A	Rural
English Bay	ADOL	85	192	Southcentral	Lower Kenai Peninsula	15C	Rural
Port Graham	ADOL	85	188	Southcentral	Lower Kenai Peninsula	15C	Rural
Seldovia	ADOL	85	403	Southcentral	Lower Kenai Peninsula	15C	Rural
Balance of Cordova Census Sub-Area	ADOL	85	362	Southcentral	Prince William Sound	6	Rural
Balance of Prince William Sound Census Sub-Area	ADOL	85	47	Southcentral	Prince William Sound	6D	Rural
Chenequa Bay	ADOL	85	60	Southcentral	Prince William Sound	5D	Rural
Cordova	ADOL	85	1901	Southcentral	Prince William Sound	6C	Rural
Eyak	ADOL	85	44	Southcentral	Prince William Sound	6C	Rural
SAN JUAN BAY	ADFG			Southcentral	Prince William Sound	6D	Rural
Tatitlek	ADOL	85	112	Southcentral	Prince William Sound	6D	Rural
ALEXANDER CREEK	ADFG			Southcentral	Upper Cook Inlet	16B	Rural
SKWENTNA	ADFG			Southcentral	Upper Cook Inlet	16B	Rural
Tyonek	ADOL	85	269	Southcentral	Upper Cook Inlet	16B	Rural
Angoon	ADOL	85	588	Southeast	Southeast	4	Rural
Annette	ADOL	85	158	Southeast	Southeast	1A	Rural
Balance of Angoon Census Sub-Area	ADOL	85	64	Southeast	Southeast	4	Rural
Balance of Haines Census Area	ADOL	85	840	Southeast	Southeast	1D	Rural
Balance of Hoonah-Yakutat Census Sub-Area	ADOL	85	226	Southeast	Southeast	4	Rural
Balance of Outer Ketchikan Census Sub-Area	ADOL	85	8	Southeast	Southeast	2	Rural
Balance of Petersburg Census Sub-Area	ADOL	85	318	Southeast	Southeast	3	Rural
Balance of Prince of Wales Census Sub-Area	ADOL	85	451	Southeast	Southeast	2	Rural
Balance of Skagway Census Sub-Area	ADOL	85	27	Southeast	Southeast	1D	Rural
Balance of Wrangell Census Sub-Area	ADOL	85	193	Southeast	Southeast	1B,3	Rural
Cape Pole	ADOL	85	50	Southeast	Southeast	2	Rural
Coffman Cove	ADOL	85	272	Southeast	Southeast	2	Rural
Craig	ADOL	85	924	Southeast	Southeast	2	Rural
EDNA BAY	ADFG			Southeast	Southeast	2	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION			COMMUNITY REGION	SUBREGION	CNU	RURAL STATUS
	SOURCE	YEAR	POPULATION				
Elfin Cove	ADOL	85	47	Southeast	Southeast	4	Rural
Gustavus	ADOL	85	217	Southeast	Southeast	1C	Rural
Haines	ADOL	85	1151	Southeast	Southeast	1D	Rural
HOLLIS	ADFG			Southeast	Southeast	2	Rural
Hoonah	ADOL	85	917	Southeast	Southeast	4	Rural
Hydaburg	ADOL	85	463	Southeast	Southeast	2	Rural
Hyder	ADOL	85	73	Southeast	Southeast	1A	Rural
Kake	ADOL	85	634	Southeast	Southeast	3	Rural
Kasaan	ADOL	85	83	Southeast	Southeast	2	Rural
Klawock	ADOL	85	613	Southeast	Southeast	2	Rural
Klukwan	ADOL	85	153	Southeast	Southeast	1D	Rural
Kupreanof	ADOL	85	41	Southeast	Southeast	3	Rural
Metlakatla	ADOL	85	1270	Southeast	Southeast	1A	Rural
Meyers Chuck	ADOL	85	53	Southeast	Southeast	1A	Rural
Pelican	ADOL	85	234	Southeast	Southeast	4	Rural
Peteraburg	ADOL	85	3145	Southeast	Southeast	3	Rural
Point Baker/Port Protection	ADOL	85	108	Southeast	Southeast	2	Rural
Port Alexander	ADOL	85	131	Southeast	Southeast	4	Rural
Saxman	ADOL	85	772	Southeast	Southeast	1A	Rural
Sitka	ADOL	85	8160	Southeast	Southeast	4	Rural
Skagway	ADOL	85	610	Southeast	Southeast	1D	Rural
Tenakee Springs	ADOL	85	142	Southeast	Southeast	4	Rural
Thorne Bay	ADOL	85	412	Southeast	Southeast	2	Rural
Whale Pass	ADOL	85	83	Southeast	Southeast	2	Rural
Wrangell	ADOL	85	2387	Southeast	Southeast	1B	Rural
Yakutat	ADOL	85	456	Southeast	Southeast	5A	Rural
Chignik Bay	ADOL	85	129	Southwest	Alaska Peninsula	9E	Rural
Chignik Lagoon	ADOL	85	40	Southwest	Alaska Peninsula	9E	Rural
Chignik Lake	ADOL	85	164	Southwest	Alaska Peninsula	9E	Rural
Cold Bay	ADOL	85	157	Southwest	Alaska Peninsula	9D	Rural
Egegik	ADOL	85	112	Southwest	Alaska Peninsula	9E	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDDEMOG.WK1)

COMMUNITY	POPULATION			COMMUNITY REGION	SUBREGION	CMU	RURAL STATUS
	SOURCE	YEAR	POPULATION				
Ivanof Bay	ADOL	85	49	Southwest	Alaska Peninsula	9E	Rural
King Cove	ADOL	85	547	Southwest	Alaska Peninsula	9D	Rural
King Salmon	ADOL	85	648	Southwest	Alaska Peninsula	9C	Rural
Naknek	ADOL	85	382	Southwest	Alaska Peninsula	9C	Rural
Nelson Lagoon	ADOL	85	44	Southwest	Alaska Peninsula	9D	Rural
Perryville	ADOL	85	137	Southwest	Alaska Peninsula	9E	Rural
Pilot Point	ADOL	85	79	Southwest	Alaska Peninsula	9E	Rural
Port Heiden	ADOL	85	108	Southwest	Alaska Peninsula	9E	Rural
PORT MOLLER	ADFG			Southwest	Alaska Peninsula	9E	Rural
Sand Point	ADOL	85	671	Southwest	Alaska Peninsula	9D	Rural
South Naknek	ADOL	85	195	Southwest	Alaska Peninsula	9C	Rural
UGASHIK	ADFG			Southwest	Alaska Peninsula	9E	Rural
Atka	ADOL	85	93	Southwest	Aleutian-Pribilof	14C	Rural
Nikolski	ADOL	85	46	Southwest	Aleutian-Pribilof	10	Rural
Adak Station	ADOL	85	4665	Southwest	Aleutian-Pribilof	10	Rural
Saint George	ADOL	85	191	Southwest	Aleutian-Pribilof	10	Rural
Attu	ADOL	85	31	Southwest	Aleutian-Pribilof	10	Rural
Saint Paul	ADOL	85	466	Southwest	Aleutian-Pribilof	10	Rural
DUTCH HARBOR	ADFG			Southwest	Aleutian-Pribilof	10	Rural
Shemya Station Census Designated Place	ADOL	85	613	Southwest	Aleutian-Pribilof	10	Rural
Akutan	ADOL	85	80	Southwest	Aleutian-Pribilof	10	Rural
False Pass	ADOL	85	77	Southwest	Aleutian-Pribilof	10	Rural
Balance of Aleutian Island Census Area	ADOL	85	49	Southwest	Aleutian-Pribilof	10	Rural
Unalaska	ADOL	85	1331	Southwest	Aleutian-Pribilof	10	Rural
New Stuyahok	ADOL	85	339	Southwest	Bristol Bay	17C	Rural
Pedro Bay	ADOL	85	70	Southwest	Bristol Bay	9B	Rural
PORT ALSWORTH	ADFG			Southwest	Bristol Bay	9B	Rural
Balance of Bristol Bay Census Area	ADOL	85	101	Southwest	Bristol Bay	9C	Rural
Portage Creek	ADOL	85	35	Southwest	Bristol Bay	17C	Rural
Clark's Point	ADOL	85	79	Southwest	Bristol Bay	17C	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMU	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Togiak	ADOL	85	556 Southwest	Bristol Bay	17A	Rural
Ekwok	ADOL	85	107 Southwest	Bristol Bay	17C	Rural
Twin Hills	ADOL	85	44 Southwest	Bristol Bay	17A	Rural
Iliamna	ADOL	85	126 Southwest	Bristol Bay	9B	Rural
Aleknagik	ADOL	85	180 Southwest	Bristol Bay	17C	Rural
Balance of Dillingham Census Area	ADOL	85	128 Southwest	Bristol Bay	9,17	Rural
Levelock	ADOL	85	109 Southwest	Bristol Bay	9B	Rural
Dillingham	ADOL	85	2141 Southwest	Bristol Bay	17C	Rural
Neshalen	ADOL	85	165 Southwest	Bristol Bay	9B	Rural
Igiugig	ADOL	85	38 Southwest	Bristol Bay	9B	Rural
Koiganek	ADOL	85	161 Southwest	Bristol Bay	17B	Rural
Hondalton	ADOL	85	234 Southwest	Bristol Bay	9B	Rural
Menokotak	ADOL	85	309 Southwest	Bristol Bay	17C	Rural
Kokhanok	ADOL	85	68 Southwest	Bristol Bay	9B	Rural
Akhlok	ADOL	85	109 Southwest	Kodiak Island	8	Rural
Balance of Kodiak Island Census Sub-Area	ADOL	85	3727 Southwest	Kodiak Island	8	Rural
Karluk	ADOL	85	114 Southwest	Kodiak Island	8	Rural
Kodiak City	ADOL	85	6173 Southwest	Kodiak Island	8	Rural
Kodiak Coast Guard Station	ADOL	85	1731 Southwest	Kodiak Island	8	Rural
Larsen Bay	ADOL	85	217 Southwest	Kodiak Island	8	Rural
Old Harbor	ADOL	85	344 Southwest	Kodiak Island	8	Rural
Ouzinkie	ADOL	85	235 Southwest	Kodiak Island	8	Rural
Port Lions	ADOL	85	302 Southwest	Kodiak Island	8	Rural
Cape Mendenham Census Designated Place	ADOL	85	9 Western	Central Bering Sea	18,17A	Rural
Chefornak	ADOL	85	277 Western	Central Bering Sea	18	Rural
Goodnews Bay	ADOL	85	241 Western	Central Bering Sea	18	Rural
Kipruk	ADOL	85	408 Western	Central Bering Sea	18	Rural
Kongiganak	ADOL	85	291 Western	Central Bering Sea	18	Rural
Kwigillingok	ADOL	85	244 Western	Central Bering Sea	18	Rural
Mekoryuk	ADOL	85	152 Western	Central Bering Sea	18	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION COMMUNITY			SUBREGION	GMI	RURAL STATUS
	SOURCE	YEAR	POPULATION REGION			
Newtok	ADOL	85	207 Western	Central Bering Sea	18	Rural
Nightmute	ADOL	85	153 Western	Central Bering Sea	18	Rural
Platinum	ADOL	85	65 Western	Central Bering Sea	18	Rural
Quinhagak	ADOL	85	453 Western	Central Bering Sea	18	Rural
Toksook Bay	ADOL	85	362 Western	Central Bering Sea	18	Rural
Tuxunak	ADOL	85	318 Western	Central Bering Sea	18	Rural
Akiachak	ADOL	85	459 Western	Lower Kuskokwim	18	Rural
Akiak	ADOL	85	289 Western	Lower Kuskokwim	18	Rural
Atmoutluak	ADOL	85	234 Western	Lower Kuskokwim	18	Rural
Balance of Lower Kuskokwim Census Sub-Area	ADOL	85	338 Western	Lower Kuskokwim	13	Rural
Bethel	ADOL	85	4006 Western	Lower Kuskokwim	18	Rural
Eek	ADOL	85	257 Western	Lower Kuskokwim	18	Rural
Kasigluk	ADOL	85	405 Western	Lower Kuskokwim	18	Rural
Kwethluk	ADOL	85	546 Western	Lower Kuskokwim	18	Rural
Mapakiak	ADOL	85	299 Western	Lower Kuskokwim	18	Rural
Mapeskiak	ADOL	85	303 Western	Lower Kuskokwim	18	Rural
Munapitichuk	ADOL	85	356 Western	Lower Kuskokwim	18	Rural
Oscarville	ADOL	85	63 Western	Lower Kuskokwim	18	Rural
Tuluksak	ADOL	85	321 Western	Lower Kuskokwim	18	Rural
Tuntutuliak	ADOL	85	293 Western	Lower Kuskokwim	18	Rural
Alakanuk	ADOL	85	556 Western	Lower Yukon	18	Rural
Chavak	ADOL	85	532 Western	Lower Yukon	18	Rural
Emmonak	ADOL	85	613 Western	Lower Yukon	18	Rural
Hooper Bay	ADOL	85	686 Western	Lower Yukon	18	Rural
Kotlik	ADOL	85	409 Western	Lower Yukon	18	Rural
Marshall (Fortuna Ledge)	ADOL	85	281 Western	Lower Yukon	18	Rural
Mountain Village	ADOL	85	682 Western	Lower Yukon	18	Rural
Pilot Station	ADOL	85	425 Western	Lower Yukon	18	Rural
Pitka's Point	ADOL	85	106 Western	Lower Yukon	18	Rural
Russian Mission	ADOL	85	231 Western	Lower Yukon	18	Rural

DIVISION OF SUBSISTENCE, ALASKA DEPARTMENT OF FISH AND GAME

TABLE 1. POPULATION OF ALASKA COMMUNITIES BY REGION AND RURAL STATUS (WFDEMOG.WK1)

COMMUNITY	POPULATION		COMMUNITY REGION	SUBREGION	GMI	RURAL STATUS
	SOURCE	YEAR				
Saint Marys (Andreafsky)	ADOL	85	458 Western	Lower Yukon	18	Rural
Scammon Bay	ADOL	85	304 Western	Lower Yukon	18	Rural
Sheldon Point	ADOL	85	124 Western	Lower Yukon	18	Rural
Aniak	ADOL	85	481 Western	Middle Kuskokwim	19A	Rural
Balance of Aniak Census Sub-Area	ADOL	85	64 Western	Middle Kuskokwim	19	Rural
Balance of Wade Hampton Census Sub-Area	ADOL	85	184 Western	Middle Kuskokwim	18	Rural
Chuathbaluk	ADOL	85	124 Western	Middle Kuskokwim	19D	Rural
Crooked Creek	ADOL	85	126 Western	Middle Kuskokwim	19A	Rural
GEORGETOWN	ADFG		Western	Middle Kuskokwim	19A	Rural
Lima Village	ADOL	85	48 Western	Middle Kuskokwim	19A	Rural
Lower Kalskag	ADOL	85	281 Western	Middle Kuskokwim	19A	Rural
HAPAIMUTE	ADFG		Western	Middle Kuskokwim	19A	Rural
Red Devil	ADOL	85	42 Western	Middle Kuskokwim	19A	Rural
Sleetmute	ADOL	85	130 Western	Middle Kuskokwim	19A	Rural
Sparrevohn Air Force Base	ADOL	85	15 Western	Middle Kuskokwim	19B	Rural
Stony River	ADOL	85	92 Western	Middle Kuskokwim	19A	Rural
Upper Kalskag	ADOL	85	154 Western	Middle Kuskokwim	19A	Rural

Attachment 1

**Species/Areas Where Subsistence
Is Currently Limited**

The following listing is based on the table presented in 5 AAC 99.025.

SPECIES/AREA	COMMUNITY OR UNIT RESIDENCY
<u>BLACK BEAR</u>	
Unit 1(C)	Haines, Gustavus, Klukwan and Hoonah, and, except as provided in 5 AAC 99.014(1)(B), Unit 1(C).
Unit 6(A)	Yakutat.
Units 6(B) and 6(C)	Units 6(B) and 6(C) except Cordova.
Unit 6(D)	Cherega Bay, Tatitlek.
<u>BROWN BEAR</u>	
Unit 4	Unit 4 and Kake.
Unit 5	Yakutat.
Unit 9(B)	Unit 9(B).
Unit 9(E)	Chignik Lake, Ivanof Bay, and Perryville.
Unit 17(A)	Unit 17, Goodnews Bay, and Platinum.
Those portions of Units 17(A) and 17(B) north and west of a line beginning from the GMU 18 boundary at the northwest end of Nenevok Lake, to the southeast point of Upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the GMU 17 boundary intersects the Shotgun Hills	Kwethluk.
Units 17(B) and 17(C)	Unit 17.

SPECIES/AREA

COMMUNITY OR UNIT RESIDENCY

Units 13 and 14(B)
(Nelchina herd)

Unit 11, Unit 12 along the Nabesna
Road, and Unit 13.

Unit 17

Unit 9(B), Unit 17, Lime Village, and
Stony River.

Those portions of
Units 17(A) and 17(B)
north and west of a line
beginning from the
GMU 18 boundary at the
northwest end of Nenevok
Lake, to the southern
point of Upper Togiak
Lake and northeast to
the northern point of
Nuyakuk Lake, northeast
to the point where the
GMU 17 boundary inter-
sects the Shotgun Hills

Kwethluk.

Unit 18

Kwethluk.

Units 19(A) and 19(B)

Fall:
Units 19(A) and 19(B), and Kwethluk.

Winter:
Unit 18 in the Kuskokwim drainage and
Kuskokwim Bay, Units 19(A) and 19(B),
and Kwethluk.

Unit 19(C)

Unit 19(C), Lime Village, McGrath,
Nikolai, and Telida.

Unit 19(D)

Unit 19(D), Lime Village, Sleetmute,
and Stony River.

Unit 20(D)
(40-Mile herd)

Unit 12 north of the Wrangell-St.
Elias National Park and Preserve,
Unit 20(D) except as provided in
5 AAC 99.014(1)(E), Unit 20(E), and
Dot Lake.

Macomb herd

Dot Lake.

Unit 20 (E)
(40-Mile herd)

Unit 12 north of the Wrangell-St. Elias
National Park and Preserve, Unit 20(D)
except as provided in 5 AAC 99.014
(1)(E), and Unit 20(E).

Units 21(A) and 21(E)

Unit 21(A), Aniak, Chuathbaluk, Crooked

SPECIES/AREA

COMMUNITY OR UNIT RESIDENCY

from the northernmost point of Rocky Bay to the head of Tutka Bay and east of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay

MOOSE

Unit 1(B), Stikine Drainage

Wrangell.

Unit 1(D)

Unit 1(D).

Unit 5

Yakutat.

Units 9(A), 9(B), 9(C), and 9(E)

Units 9(A), 9(B), 9(C), and 9(E).

Unit 11

Unit 11, Unit 12 along the Nabesna Road and Units 13(A)-(D).

Unit 12 East, that portion lying east of the Nabesna River and south of the winter trail running southeast from Pickeral Lake and the Canadian border

Unit 12.

Unit 12 South, that portion south of a line from Noyes Mountain southeast to the confluence of Tatschunda Creek and the Nabesna River

Unit 11 north of the 62nd parallel and excluding BLM parcels of north and south Slana; Unit 12, Units 13(A)-(D), and Dot Lake.

Unit 12 North, the remainder of the unit not described above

Unit 12, Dot Lake, and Mentasta Lake.

Unit 13

Unit 13.

Unit 15(C), that portion southwest of a line from Point Pogibshi to the point of land between Rocky Bay and Windy Bay

English Bay and Port Graham.

SPECIES/AREA	COMMUNITY OR UNIT RESIDENCY
	99.014(1)(E), and Tanacross.
Unit 20(F)	Unit 20(F), Manley, Minto, and Stevens Village.
Unit 21(A)	Units 21(A) and 21(E) except as provided in 5 AAC 99.014(1)(F), Takotna, McGrath, Aniak, and Crooked Creek.
Units 21(B) and 21(C)	Units 21(B) and 21(C) except as provided in 5 AAC 99.014(1)(F), and Russian Mission.
Unit 22	Unit 22.
Unit 23	Unit 23.
Unit 24	Unit 24, Anaktuvuk Pass, Koyukuk, and Galena.
Unit 25(A)	Unit 25(A) and Venetie.
Unit 25(D) west of a line from the Unit 25(D) boundary at Preacher Creek, downstream along Preacher Creek, Birch Creek, and Lower Mouth Birch Creek to the Yukon River; then downstream along the north bank of the Yukon River (including islands) to the mouth of Hadvsenzik River to its confluence with Forty and One-Half Mile Creek, then upstream along Forty and One-Half Creek, to Nelson Mountain on the Unit 25(D) boundary	Beaver, Birch Creek, and Stevens Village.
Remainder of Unit 25(D)	Residents of the remainder of Unit 25(D).
Unit 26	Unit 26(except the Prudhoe Bay-Deadhorse Industrial Complex), Point Hope, and Anaktuvuk Pass.

SPECIES/AREA

Units 11, 13, 15, 16
20(D), 22, and 23

COMMUNITY OR RESIDENCY

Units 11, 13, 15 (except as provided
in 5 AAC 99.014(1)(D)), Units 16 and
20(D) (except as provided in 5 AAC
99.014(1)(E)), and Units 22, and 23.

PTARMIGAN

Units 11, 13, 15, 16
20(D), 22, and 23

Units 11, 13, 15, (except as provided
in 5 AAC 99.014(1)(D)), Units 16 and
20(D) (except as provided in 5 AAC
99.014(1)(E)), and Units 22, and 23.

MEMORANDUM

State of Alaska

TO: Norman Cohen
Deputy Commissioner
Juneau

DATE: March 1, 1990

FILE NO:

TELEPHONE NO: 267-2231

THRU:


SUBJECT: Review of Subsistence
Regulations

SUBSISTENCE SECTION

RECEIVED

MAR 02 1990

DEPARTMENT OF FISH & GAME

FROM: 
Lew Pamplin
Director
Division of Wildlife Conservation
Department of Fish and Game
Anchorage

This is in response to your February 5 request on subsistence hunting regulations. As usual, our staff has done an excellent job in a short timeframe of compiling and analyzing pertinent information.

Those species and areas in which subsistence eligibility is currently limited are listed in Attachment I. The information on subsistence eligibility comes from 5AAC 99.025. At the end of this listing, we have included subsistence eligibility determinations which were passed in November 1989 by the Board of Game and were scheduled to become effective on July 1, 1990.

For your requests 2-6, we compiled the information on tabular format by region. Footnotes are used to provide clarification where necessary.

If you have questions on this material, please contact either me or the appropriate regional supervisor.

Attachments

cc: Steve Behnke
Steve Peterson
Wayne Regelin
Regional Supervisors, Division of Wildlife Conservation

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region I

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result? ⁴	Would Increased Harvest be of Biological Concern? ⁵	% of Harvest on Federal Lands? ⁶
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Deer 5 AAC 85.030 (3)

■ Unit 4, that portion north of Tenakee Inlet and East of Port Frederick, including all drainages of Tenakee Inlet.	370 ⁴	390 ⁵	Yes ⁶	Yes ⁶	90%
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SUBSISTENCE HUNTERS: Aug. 1-
Jan. 31

Six deer, antlerless deer may be taken after Sept. 15

OTHER HUNTERS: Aug. 1-
Jan. 31

Three deer, antlerless deer may be taken after Sept. 15

Moose 5 AAC 85.045 (1)

■ Unit 1(D)	210 ⁷	525 ⁸	Yes	Yes	0%
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SUBSISTENCE HUNTERS: Sep. 1-
Sep. 10

One bull by registration permit;
15 bulls may be taken.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
BROWN BEAR

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
5 AAC 85.020(15) Brown Bear Units 17(A) and 17(C)					
SUBSISTENCE HUNTERS:	Sept. 10-Oct. 10 April 10 - May 25	10-15	50-100 ⁴	YES ⁵	YES ⁵ 25%
One bear every four regulatory years.					
OTHER HUNTERS:					
	Sept. 10 - Oct. 10 May 10 - May 25				
One bear every four regulatory years.					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. An April and early May season would be attractive to residents and guide-outfitters.
5. If season dates were not changed.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
CARIBOU

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.025(4) Caribou					
<i>Unit 9(D) and Unit 10, Unimak Island only</i>					
SUBSISTENCE HUNTERS:					
Sept. 1 - Mar. 31					
Two caribou	175-225	50-100 ⁴	YES	YES ⁵	80%
OTHER HUNTERS:					
Sept. 1 - Oct. 31					
One caribou					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Most of the increase in hunting effort would be along the Cold Bay road system when the caribou frequent that area after mid November.
5. Staff is proposing to limit the bag limit in 1990-91 to 1 bull for all hunters because of the decreasing size of this herd.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
CARIBOU

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier I? Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.025(7) Caribou	152 ⁴	2000+ due to proximity to large population and relatively good access during the winter season.	Yes	Yes	40%

Unit 12, residents of Tetlin and Northway only:

1 caribou by registration permit only.

Season will be opened by Emergency Order when Nelchina caribou are present and Mentasta caribou are absent; season will be closed by emergency order after 80 Nelchina caribou have been taken.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of permits issued 1986-89.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOUNTAIN GOAT

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.040(2) Goat					
<i>Remainder of Unit 6</i> SUBSISTENCE HUNTERS: Aug. 1 - Jan. 31 One goat by registration permit.	30-40 ⁴	up to 100	Possibly ⁵	NO ⁶	50-60%
OTHER HUNTERS: Sept. 1 - Nov. 30 One goat by registration permit.					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on the number of permits issued. Harvest is usually 1-2 goats/year by subsistence users.
5. Tier II should be considered for Tatitlek and Chenega hunt areas due to relatively low allowable harvests.
6. Under the current management system specific hunts are closed by Emergency Order when allowable harvest limits are reached. It is anticipated that this would continue regardless of subsistence regulations.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOUNTAIN GOAT

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5AAC 85.040(3) Goat Unit 15(C), the English Bay hunt sub-area					
SUBSISTENCE HUNTERS: Aug. 10 - Oct. 31					
One goat by registration permit only.	<5	50-150 ⁴	YES ⁴	NO ⁵	0%
OTHER HUNTERS: No open season					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. If this area was open as drawing hunt we would anticipate up to 150 applicants; an open registration hunt would result in at least 50 applicants and we would not wish to administer on a registration permit basis.
5. Harvest would be controlled by Emergency Orders.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.045(8) Moose Unit 9(B), that portion draining Lake Clark					
SUBSISTENCE HUNTERS:					
Sept. 5 - Sept. 20					
Dec. 1 - Dec. 31	50-100	20-50 ⁴	NO	NO ⁵	20-25%
One moose; however, antlerless moose may be taken only from Dec. 16 - Dec. 31					
RESIDENT HUNTERS:					
Sept. 10 - Sept. 20					
Dec. 1 - Dec. 31					
One moose; however, antlerless moose may be taken only from Dec. 16 - Dec. 31					
NONRESIDENT HUNTERS:					
Sept. 10 - Sept. 20					
One bull					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimated increase in hunter numbers if subsistence eligibility is expanded to include all Alaskans.
4. The current subsistence priority consists of a 5 day earlier season. If this applied to all hunters there may be increased competition, but no large increase in the number of moose killed.
5. Staff is proposing to delete the antlerless season in 1990-91, for biological reasons; therefore the antlerless season would not be considered under a change in subsistence eligibility.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
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5 AAC 85.045(8) Moose
Unit 9(C), that portion
draining the Naknek River

SUBSISTENCE HUNTERS:

Sept. 5 - Sept. 20 ---->	50-100	10-20	NO	NO	10-20%
Dec. 1 - Dec. 31----->	60-100	20-50	NO	YES ⁴	10-20%

One moose; however antlerless
moose may be taken by
registration permit only.

OTHER HUNTERS:

Sept. 10 - Sept. 20

One moose.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. The current antlerless quota is about 10 cows; there are usually 7-10 moose killed without an Emergency Order closure.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.045(11) Moose	550-800 ⁴	4000+ due to good road system access, well developed trail systems, and high demand for moose in Unit 13	Yes ⁵	Yes ⁶	60%

Remainder of Unit 13

SUBSISTENCE HUNTERS: Aug. 25-Sept. 20

1 moose; however, bulls may be taken by registration permit only; only 1 permit will be issued per household. Antlerless moose may be taken only in Unit 13(E), by drawing permit only; up to 25 permits will be issued; no person may take a cow accompanied by a calf.

RESIDENT AND NONRESIDENT HUNTERS: Sept. 1-Sept. 20

1 moose; however, bulls must have 36-inch antlers. Antlerless moose may be taken only in Unit 13(E), by drawing permit only; up to 25 permits will be issued to Alaska residents only; no person may take a cow accompanied by a calf.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of permits issued 1986-89.
5. Tier II would be required for subsistence antlerless drawing permit hunt, but no permits will be issued in 1990 due to biological concerns.
6. Harvest quota/registration permit hunt would need to be established, or a more restrictive antler size bag limit established if a general open season was continued.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.045 (14) Moose	130 ⁴	1000+ due to proximity to large population and relatively good access during the winter season.	Yes ⁵	Yes	0%

Remainder of Unit 16(B)

SUBSISTENCE HUNTERS: Sept. 1-Sept. 30
Dec. 1-Feb. 28

1 moose; however, antlerless moose may be taken only from Sept. 25-Sept. 30, and during the period Dec. 1-Feb. 28, within which a two-week season for moose by registration permit only will be announced by Emergency Order

RESIDENT AND NONRESIDENT HUNTERS: Sept. 1-Sept. 30

1 bull

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Based on number of registration permits issued 1986-89.
5. A registration hunt with a limited allowable harvest would not be feasible with the expanded eligibility.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region II
MOOSE

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% Harvest on Federal Lands?
5 AAC 85.045(15) Moose					
<i>Unit 17(C), that portion including the Iowithla drainage and Sunshine Valley</i>					
SUBSISTENCE HUNTERS:					
Aug. 20 - Sept. 15					
One bull	250-300	100-200	Possibly	YES (long term)	0%
RESIDENT HUNTERS:					
Sept. 1 - Sept. 15					
One bull					
NONRESIDENT HUNTERS:					
Sept. 5 - Sept. 15					
One bull					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99.025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory year 1989-90
Region II
DALL SHEEP

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern	% of Harvest on Federal Lands?
5AAC85.055(4) Dall Sheep	200-250	400-600	No	No	30%

Units 6 and 9, remainder of Unit 13, and Units 14(B), 16, 17, and 19.

SUBSISTENCE HUNTERS: Aug. 10-Sept. 20
1 ram with 7/8 curl horn or larger.

RESIDENT AND
NONRESIDENT HUNTERS: Aug. 10-Sept. 20
1 ram with full-curl horn or larger.

-
1. Subsistence hunts which are currently different from general hunts.
 2. Based on existing regulations for 1989-90 (5ACC 99.025) and recent hunter effort.
 3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region III -- Interior

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
GRIZZLY BEAR						
Unit 24 that portion of the Koyukuk River drainage upstream from, and including, the Alatna River drainage						
SUBSISTENCE HUNTERS: Residents of Anaktuvuk Pass: One bear every regulatory year.	Sept. 1- Oct. 31 Apr. 1- May 31	30 30	30 30	No No	No No	100% 100%
ALL OTHER SUBSISTENCE HUNTERS: One bear every four regulatory years by registration permit; 15 bears may be taken. registration permit;	Sept. 1- Oct. 31 May 10- May 31	100 100	10 10	No No	No No	50% 50%
RESIDENT/NONRESIDENT HUNTERS: One bear every four regulatory years by registration permit; 15 bears may be taken. registration permit;	Sept. 1- Oct. 31 May 10- May 31	50 50	100 100	No No	No No	50% 50%

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
Unit 19, residents domiciled in Lina Village only: No bag limit, provided that no more than 100 caribou are taken. Cows and calves may not be taken April 1-Aug. 9.	35-40	3500-4000	Yes	Yes	75%
SUBSISTENCE HUNTERS: July 1-June 30					
Unit 20(D) south of the Alaska Highway	2-4 Subsistence	500+	Yes	Yes	0%
40-80 Permits					
SUBSISTENCE HUNTERS: Aug. 10-Sept. 30 One bull.					
RESIDENT/NONRESIDENT HUNTERS: One bull by drawing permit only. 150 permits will be issued.					
Unit 20(D) north of the Alaska Highway.	20*	250	No	No	0%
	(*These numbers are included in data for GMU 12 & 20(D) north of the Alaska Hwy listed above)				
SUBSISTENCE HUNTERS: Aug. 10-Sept. 30 One caribou.					
Dec. 1-Feb. 28					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Forty-mile River upstream from and including Katchumstuck Creek.						
SUBSISTENCE HUNTERS: One caribou	Aug. 10- Sept. 30	5-25	100-200 - Area is remote.	No	No	75% including BLM managed native selections.
	Dec. 1- Feb. 28	5-25	100-200 - Area is remote.	No	No	75% including BLM BLM managed native selections.
RESIDENT/MONRESIDENT HUNTERS: One bull	Aug. 10- Sept. 20					
Remainder of Unit 20(E) (accessible by the Taylor Highway and associated trails)						
SUBSISTENCE HUNTERS: One caribou by registration permit only. Season will be closed when 325 caribou have been taken.	Aug. 10- Sept. 30	400-500	2000-3000 [*]	Yes	Yes	75% including BLM managed native selections.
	Dec. 1- Feb. 28	400-500	2000-3000 [*]	Yes	Yes	75% including BLM managed native selections.

^{*}If all Alaskans were considered eligible for subsistence, most would hunt under the subsistence regulations, and not in this hunt.

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
Units 24, and 26(A), those portions within the Gates of the Arctic National Park. Three sheep.						
SUBSISTENCE HUNTERS:	Aug. 1- Apr. 30	30	30	No	No	100
RESIDENT/NONRESIDENT HUNTERS:	No Open Season					
<u>MOOSE</u>						
Unit 12, that portion drained by the Tanana, Nebesna and Chisana Rivers east of the Tetlin Reservation boundary and north of the winter trail from Pickeral Lake to the Canadian border. One bull.						
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 20	75-100	100-150	No	No	60%; Tetlin MWR
RESIDENT/NONRESIDENT HUNTERS:	Sept. 10- Sept. 15					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
RESIDENT/NONRESIDENT HUNTERS: Unit 19(D), remainder of the Upper Kuekokwim Controlled Use Area. One bull.	Sept. 1- Sept. 20	25-30	50	No	Yes	50%
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 30	200	300	Yes	Yes	50%
	Dec. 1- Feb. 28	20	200	Yes	Yes	75%
RESIDENT/NONRESIDENT HUNTERS:	Sept. 1- Sept. 30	200	200	No	No	50%
Unit 20(B), that portion within the Minto Management Area. One bull by registration permit only. Season will be closed when 15 bulls have been taken.		75-100 ⁴	Over 500 due to proximity to Fairbanks, good access, and high demand for moose.	Yes	Yes	None
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 20					
	Jan. 10- Feb. 28					
RESIDENT/NONRESIDENT HUNTERS:	No Open Season					

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
Unit 20(F). One bull.	15-30	100	Yes, for	Yes, for	30% (BIM)
SUBSISTENCE HUNTERS:	Sept. 1- Sept. 15	Based on reported subsistence participation 1988.	the Dec. portion of the season. 1988.	the Dec. portion of the season.	
	Dec. 1- Dec. 10	I did not include Minto permit holders as eligible because in practice few Minto hunters would travel to 29F although eligible.			
RESIDENT/NONRESIDENT HUNTERS:	Sept. 1- Sept. 15				
Unit 21(D)					
SUBSISTENCE HUNTERS:	Sept. 5- Sept. 25	200	Yes	Yes	80%
One moose; antlerless moose may be taken only from Sept. 21-Sept. 25 and Feb. 1- Feb. 5. Moose may not be taken within 1/2 mile of the Yukon River during the February season.	Feb. 1- Feb. 5	200	Yes	Yes	80%
RESIDENT/NONRESIDENT HUNTERS: One bull.	Sept. 5- Sept. 25	400	No	No	80%

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?	
SUBSISTENCE HUNTERS:	Sept. 10- Sept. 30					
	Dec. 1- Dec. 10					
	Feb. 18- Feb. 28					
Remainder of Unit 25(D) One bull						
SUBSISTENCE HUNTERS:	Sept. 10- Sept. 30	280-310 Based on area biologist's est.	330-380	No	No	100%
	Dec. 1- Dec. 10					
RESIDENT/NONRESIDENT HUNTERS:	Sept. 10- Sept. 20	31 (1989 hunters)				
Remainder of Units 26(B), and Unit 26(C)						
SUBSISTENCE HUNTERS:	Aug. 1- Dec. 31	50-60 Based on 1988 Subsistence Division est. of hunters in Kaktovik and Nuiqsut.	150-175	Yes	Yes	50%
One moose.						

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region V -- Northwest

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
<u>Unit 18 (P/G Bear)</u>					
SUBSISTENCE HUNTERS: (Domiciled in Kwethluk)	12-16	20-40, mostly residents of Bethel	Yes	Yes	100
Sept. 10-Oct. 10					
Apr. 10-May 25					
One bear every regulatory year					
ALL OTHER HUNTERS:					
Sept. 10-Oct 10					
Apr. 10-May 25					
One bear every 4 regulatory years					

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.

Subsistence Hunting Regulations
Regulatory Year 1989-90
Region V - Northwest

Hunt Seasons and Bag Limits ¹	Current Eligibility ²	Expanded Eligibility ³	Would Tier II Result?	Would Increased Harvest be of Biological Concern?	% of Harvest on Federal Lands?
<u>Unit 26A (Moose)</u>					
SUBSISTENCE HUNTERS:	20-40	80-100 ⁵	Yes	Yes ⁴	10

Aug. 1-Dec. 31

One moose. The taking of
cows accompanied by calves
is prohibited.

ALL HUNTERS:

Sept. 1 - Dec. 31

One moose. The taking of
cows accompanied by calves
is prohibited.

1. Subsistence hunts which are currently different from general hunts.
2. Based on existing regulations for 1989-90 (5AAC 99025) and recent hunter effort.
3. Estimate of increased number of hunters should subsistence eligibility be expanded to include all Alaskans.
4. Overharvest can be prevented and Tier II would not be necessary if aircraft use is allowed only from Sept. 1 - Dec. 31.
5. Additional hunters would mostly come from the Fairbanks area.

MEMORANDUM

State of Alaska

TO: Norm Cohen
Deputy Commissioner
Department of Fish and Game

DATE: February 21, 1990

FILE NO

TELEPHONE NO

FROM: *3/2/90*
David Cantillon
Deputy Director
Division of Commercial Fisheries

SUBJECT: Response to
Subsistence
Questions Your Memo
of 02/05/90

The responses to the six questions you posed are organized by region with the various management areas lumped into each response. Due to the short time frame, some small details may have been overlooked.

REGION I

1. By board action in the spring of 1989, the residents domiciled in the communities of Yakutat, Klukwan, Haines, Hoonah, Angoon, Sitka, Kake, Saxman, Kasaan, Klawock, Craig and Hydaburg have a priority for a variety of fishery resources within specific described areas (5 AAC 01.665, 01.715 and 02.107). Additionally, 5 AAC 01.730(d) limits subsistence coho fishing in Mitchell Bay to residents of Angoon.
2. The subsistence halibut fishery is open year around while personal use fishing is open from 2/1 through 12/31. 5 AAC 77.624(1) and 77.676(1)

For herring roe on kelp in Yakutat a permit is required for personal use but not for subsistence. 5 AAC 77.620(4)

In Yakutat and Southeast, bottomfish may be taken by all gear types for subsistence, but personal use fishermen can only use longlines or hand held lines. 5 AAC 77.622(2). Additionally, in Southeast there are personal use rockfish limits in areas adjacent to Ketchikan and Sitka that do not apply to subsistence fishermen. 5 AAC 77.622(3)

In Yakutat, annual salmon bag limits are specified for personal use fishermen as well as no directed fishing for chinook. Personal use fishermen are restricted to taking salmon to the 7/1-9/30 period and can only fish in areas open to commercial fishing. 5 AAC 77.628(c&j)

In Southeast, a personal use open season, gear restrictions, seasonal bag limits, and open fishing area is provided for the Taku River and no such restrictions apply to subsistence fishing. 5 AAC 77.682(f)

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In Southeast, personal use regulations provide for the use of set nets in Shiplly Bay. No such provision is in the subsistence regulations. 5 AAC 77.682(g)(2)(C)

In Southeast, personal use regulations close the waters of Sitkoh Bay in order to provide a subsistence priority for Sitka and Angoon. 5 AAC 77.682(i)(1)

3. When the board established Southeast Alaska and Yakutat personal use fisheries, the intent was to allow individuals to continue to harvest resources, for their own personal consumption, in the same manner as was occurring before the customary and traditional findings. I do not anticipate any significant increases in demand or harvest resulting from the differences in personal use and subsistence regulations outlined in #2. Over time, if everyone in the region remained eligible for subsistence some increases could occur. If Juneau residents were eligible for subsistence, larger harvests of sockeye could be expected from the Taku River.
4. We do not anticipate the immediate development of any Tier II situations resulting from all Southeast Alaska residents becoming eligible for subsistence fishing.
5. The primary conservation situations involving subsistence and personal use fishing are already occurring. Rockfish populations near Ketchikan and Sitka and some small sockeye systems are of concern. Most of the rockfish are being harvested under sport licenses and little change to subsistence would occur if everyone was eligible. The small sockeye systems are already heavily utilized and the user level would probably stay about the same as has occurred in recent years.
6. This is a difficult question. Most of the actual harvest occurs in marine waters. A large portion of the salmon resource originates from streams that lie on federal lands.

REGION II

BRISTOL BAY - 5 AAC 01.335

1. Only those residents domiciled in the Nushagak District may take salmon in the Nushagak District and drainage.
2. Only Togiak drainage residents and residents of Manokotak may subsistence fish in Togiak.
3. Only Naknek and Kvichak drainage residents may subsistence fish in the Naknek drainage.
4. Only residents in the Iliamna and Lake Clark drainages may

subsistence fish in that drainage.

5. Only residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clarks Point and Ekuk may take subsistence herring and herring roe on kelp at Togiak. 5 AAC 27.805(a)

COOK INLET - 5 AAC 01.565(a&b)

1. Only Pt. Graham and English Bay residents may fish in the Pt. Graham and Dogfish Bay subdistricts.
2. Only Tyonek residents may fish in the Tyonek subdistrict.

PRINCE WILLIAM SOUND - 5 AAC 01.648

1. Only residents of the southwest district may subsistence fish in the Southwest District and Green Island.
2. Only residents of Tatitlek and Ellamar may fish in the area described in the Tatitlek area.

COPPER RIVER - 5 AAC 01.630(a)

1. Only those residents domiciled in Game management units 11, 13A, 13B, 13C, 13D as described in 5 AAC 88.005 may subsistence fish in the Upper Copper River.

QUESTION #2 & 3

In general, the Bristol Bay subsistence fisheries and personal use fisheries are different. The personal use fisheries on the Nushagak are only in the commercial fishing district and are limited 70 salmon per individual during the month of July. The PU fishery on the Naknek starts after the escapement goal has been reached (900,000) and dip net as well as gillnets can be used. It is doubtful there would be additional participation from what is correctly taking place with the exception of the Naknek River which has a large and growing sport fishery. If this fishery were made into a subsistence fishery this catch would increase to some unknown extent.

There are several PU fisheries in Cook Inlet, but all are managed on a quota system. Even if they were made into subsistence fisheries it is doubtful the harvest would increase substantially. The Tyonek subsistence fishery was opened to all residents in 1985 following the MADISON case. The number of permits increased to 176 from a average of 70. Tyonek was issued 73, 82 went to Anchorage area residents and 21 were issued to Kenai Peninsula residents. Only 17 percent of the total harvest was taken by non-Tyonek fishermen (326 kings).

It is doubtful if any changes could be projected for PWS at this

time since the subsistence regulations are so new and there doesn't appear to be much interest in a subsistence fishery in PWS from residents outside of the remote villages earlier mentioned.

The PU fishery in the Upper Copper River is another story, the current PU fishery issues approximately 4500 permits per year with bag limits of 15-30 fish. Subsistence bag limits are 30-50 with 200-500 per individual or family permitted. If the guideline harvest rates in the Copper River management plan were not used, the harvest could be expected to go up to at least the 120,000 fish that were documented in 1983 before the current plan was adopted. If the current guideline were maintained the harvest should remain stable at about 85,000.

It does not appear that Tier II would apply to any Region II salmon subsistence.

REGION III

1. Four finfish fisheries in the Kuskokwim Area are limited in subsistence eligibility. These are the salmon, halibut, Pacific cod and herring and herring roe fisheries. 5 AAC 01.285(a) (b) (c) (d)

Subsistence eligibility in the Yukon drainage is currently limited to residents of rural areas, as determined by the board for Yukon Area salmon and freshwater fish species including sheefish, char, whitefish, lamprey, burbot, sucker, grayling, pike and blackfish. Cape Romanzof herring also have limited access. 5 AAC 01.235(a) (b) (c) (d)

2. In the Kuskokwim Area, only the salmon fishery has regulations for personal use fishing that are different from those for subsistence fishing. Personal use fishermen must have a permit, cannot take king salmon and can only fish from 7/1-9/30. 5 AAC 77.?

In the Yukon there are no provisions for personal use fishing for freshwater finfish other than salmon. Permits are required for personal use salmon fishing, but are only required for select areas for subsistence salmon fishing - 5 AAC 01.230. Salmon taken for personal use may not be used for dog food.

3. In the Kuskokwim, no increase in effort is expected as the result of expanded eligibility.

In the Yukon, the main expansion would be from residents of the Fairbanks area who were formally limited to personal use fishing. These people could take subsistence fish for dog food which they could not do under personal use regulations. The Tanana River and the area in District 5 near the Haul Road

bridge are the locations increased effort is anticipated.

4. No Tier II situation is anticipated during the 1990 season. In the Yukon, participation in areas near Fairbanks may rise over time to levels that will require some limitation on effort.
5. No biological concern exists for the Kuskokwim as harvests are not expected to increase. In the Yukon, some concern exists for stocks in the Tanana drainage where effort increases can be anticipated. Management actions in the commercial and subsistence fisheries should be able to compensate for these increases, but fall chums are still considered rebuilding and weak returns may be impacted.
6. Again, this is a tough question. Considering that the state has jurisdiction in navigable waters, almost all the harvest occurs off federal lands.

REGION IV

1. In the Kodiak Area, the subsistence taking of king crab (5 AAC 02.465) and salmon (5 AAC 01.535) is limited to Kodiak Borough residents, excluding those persons residing on the Coast Guard base. These restrictions do not apply to the Mainland District.

In the Aleutians Islands Area, only those persons domiciled in the area and the Pribilof Islands may take halibut in the area and around the Pribilof Islands 5 AAC 01.365.

In the Alaska Peninsula Area, only the residents of the area, including those of the communities of Ivanof Bay and Perryville may take halibut in the area 5 AAC 01.415.

Only residents of the Chignik Area may take halibut for subsistence in the area 5 AAC 01.465.

2. There is only one personal use salmon fishery provided for in the region. This occurs in the Adak District in the waters around Adak and Kagalaska Islands 5 AAC 77.318.

For shellfish, the personal use, and subsistence regulations mirror each other.

3. Small increases in salmon subsistence participation would occur as a result of the participation of Coast Guard base personnel in Kodiak and by fishermen in the region that reside in other areas of the state. The increase in permits issued could range from 10-20 percent and the harvest increase would not exceed this amount.

No increase in shellfish subsistence participation or harvest is anticipated.

4. No Tier II situations are expected to develop in this region.
5. No biological concerns for fish stocks in this region have been identified.
6. In the Kodiak Area, a significant portion of the salmon harvest occurs in rivers or lagoons located in the Kodiak National Wildlife Refuge. A rough estimate of 40 percent of the Kodiak Area subsistence salmon catch falls into this category and additional salmon are harvested in marine waters adjacent to this refuge. In the other management areas of the region, almost all of the catch occurs on state or native lands or adjacent marine waters.

Composition of Statewide Subsistence Harvest

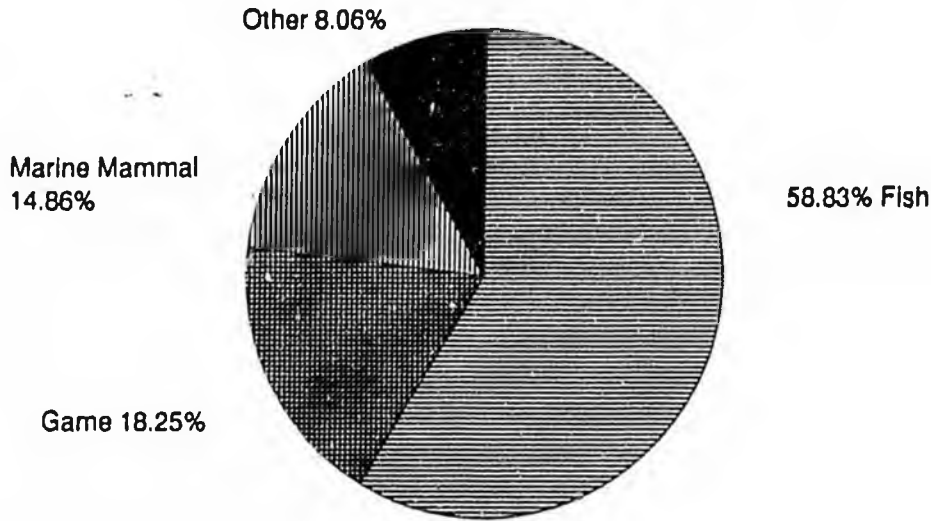


Figure 2. Statewide Subsistence Harvest Composition

How Large is the Subsistence Harvest?

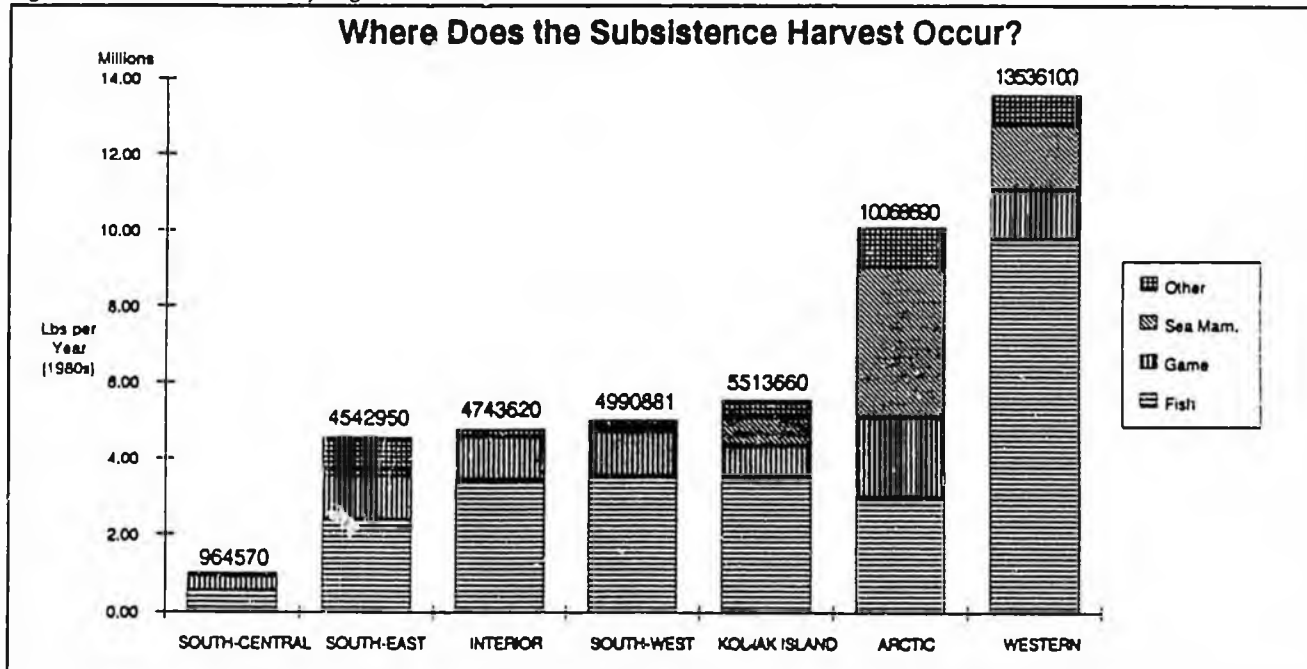
Statewide, non-commercial fishing and hunting provided an estimated 35-45 million pounds of food annually to rural areas during the 1980s. This comes to about 300-400 lbs per person a year, or about a pound of food per day.

Most of the subsistence harvest was fish (about 59 percent by weight), along with marine mammals (about 15 percent), land mammals (about 18 percent), and other wild resources (about 8 percent, including shellfish, birds, and wild plants) (Fig. 2).

Where Does the Subsistence Harvest Occur?

Subsistence uses occur in all regions of the state. The largest annual harvests occur in the Western Region (about 13.5 million lbs) and Arctic regions (about 10 million lbs). Other sizable non-commercial harvests occur on Kodiak Island (5.5 million lbs), Southwest Region (5.0 million lbs), the Interior Region (4.7 million lbs), and the Southeast Region (4.5 million lbs). The smallest harvest occurs in the Southcentral Region (.9 million lbs), primarily in the Copper River Basin, Tyonek, English Bay, and Port Graham (Fig. 3).

Figure 3. Subsistence Harvests by Region



How Does Subsistence Compare with Commercial and Sport Uses?

While subsistence is important, it represents a comparatively small portion of the wild resources harvested annually in Alaska. In Alaska's salmon fisheries, subsistence harvests generally represent less than 1 percent of the total salmon harvests. Considering all fish and game harvested in the state, about 4 percent by weight went to subsistence uses, 1 percent went to sport uses, and 95 percent went to commercial uses (Fig. 4).

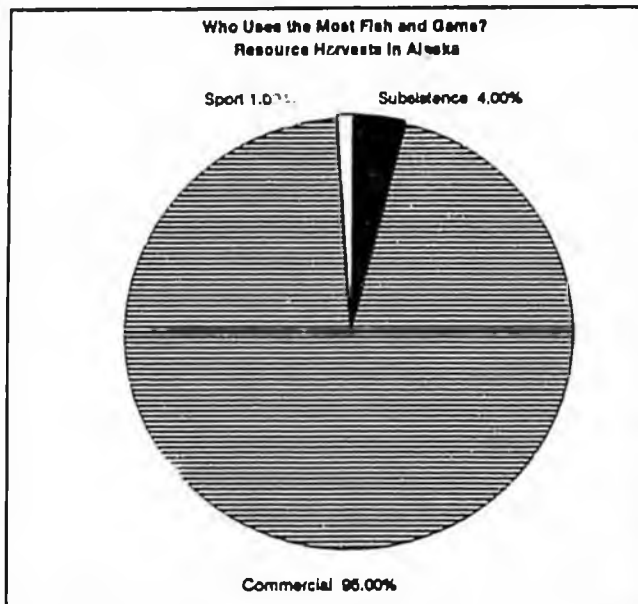


Figure 4. Fish and Game Harvests by Principal User Group

Subsistence and Cash

Our studies indicate that in many rural areas, subsistence is part of a traditional regional economy, termed a "mixed, subsistence-market economy". This type of economy occurs in the Canadian north as well. In mixed, subsistence-market economies, fishing and hunting are central activities conducted by extended family groups. The family invests in small-scale, efficient technologies, such as fishwheels, gill nets, motorized skiffs, and snowmachines, used for producing food. Subsistence production is not oriented toward market sale or accumulated profit, as is commercial market production. Rather, it is directed toward meeting the self-limiting needs of families and small communities.

A family's subsistence production is augmented and supported by cash employment by family members. Depending upon the region, employment commonly is in commercial fishing, commercial trapping, and public sector wage

employment. Typically, but not always, mean annual monetary incomes in the region are modest and intermittent. Families follow an economic strategy of using a portion of the annual monetary earnings to capitalize in subsistence technologies for producing food. This combination of subsistence and commercial-wage activities by extended family groups characterizes the mixed, subsistence-market economy.

This mixed, subsistence-market system underlies the economies of most rural areas of the state. The mixed economic system has existed in various forms since before the Russian period. It is very durable, which indicates its success in providing for rural families.

Traditional Harvest Areas

Our studies show that subsistence users tend to harvest in traditional use areas surrounding their communities. This means that most subsistence harvest areas tend to be relatively accessible from the community, although seasonal camps are used for certain species.



Figure 5. Subsistence Fishing Areas, Hoonah, 1920-1985.

Consequently, subsistence harvest areas for particular groups of people are definable and relatively predictable. Subsistence users generally do not harvest outside their community's traditional use areas (Fig. 5).

Subsistence Values

In addition to its nutritional value, subsistence provides important cultural and social values to rural communities. Our studies indicate that subsistence are central activities unifying extended families and small communities. The traditional wide-scale sharing of subsistence products between families help unify communities.

Subsistence activities bring meaning and purpose to life in many communities. This is especially true for Alaska Native groups. In many places, subsistence still expresses ancient spiritual linkages between humans, wild animals, and the land handed down by oral traditions.

The Importance of Subsistence

In summary, Alaska's rural regions tend to be different from Alaska's urban centers in terms of culture, traditional food use, and economic circumstance, reflecting the state's historic pluralism. Subsistence continues to be an essential part of the economy and culture of many rural areas. Subsistence fishing and hunting produces a substantial portion of the state's food supply in rural areas. Subsistence provides economic stability to many areas which have mixed, subsistence-market economic systems. And subsistence expresses a number of traditional values of importance to Alaska's diverse cultural groups.

Additional Reading

Alaska Department of Fish and Game, Division of Subsistence, Technical Paper Series. This series is the primary source of information on contemporary subsistence uses in Alaska. Write Technical Report Librarian, Division of Subsistence, ADF&G, Box 2-3000, Juneau, AK 99802, for listings and reports.

Wolfe, Robert J. and Robert J. Walker (1987) Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts. Arctic Anthropology 24(2):56-81. This paper describes subsistence harvests in Alaska for the 1980s by geographic region.

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Subsistence in Alaska: A Summary

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February 26, 1990

Introduction

Subsistence is important to the economy and culture of many families and communities in Alaska. This report describes some characteristics of subsistence in Alaska, based on studies by the Division of Subsistence, Alaska Department of Fish and Game.

What is Subsistence?

Subsistence is part of the cultures, traditions, and economies of many families and communities in Alaska. In current state and federal law, subsistence is defined as customary and traditional, non-commercial uses of wild resources, for a variety of purposes. These uses include harvesting and processing wild resources for food, clothing, fuel, transportation, construction, arts, crafts, sharing, and customary trade.

Alaska has a subsistence law because subsistence continues to support a major part of state's rural economy and culture. Alaska is unique in this regard. Alaska is a pluralistic state. A sizable number of traditional cultures and economies exist side-by-side in the state. These traditional cultures and economies coexist with the industrial-capitalism of Alaska's urban centers.

The stated intent of the federal and state subsistence

statutes was to provide the opportunity for these traditional cultures and economies to continue to exist.

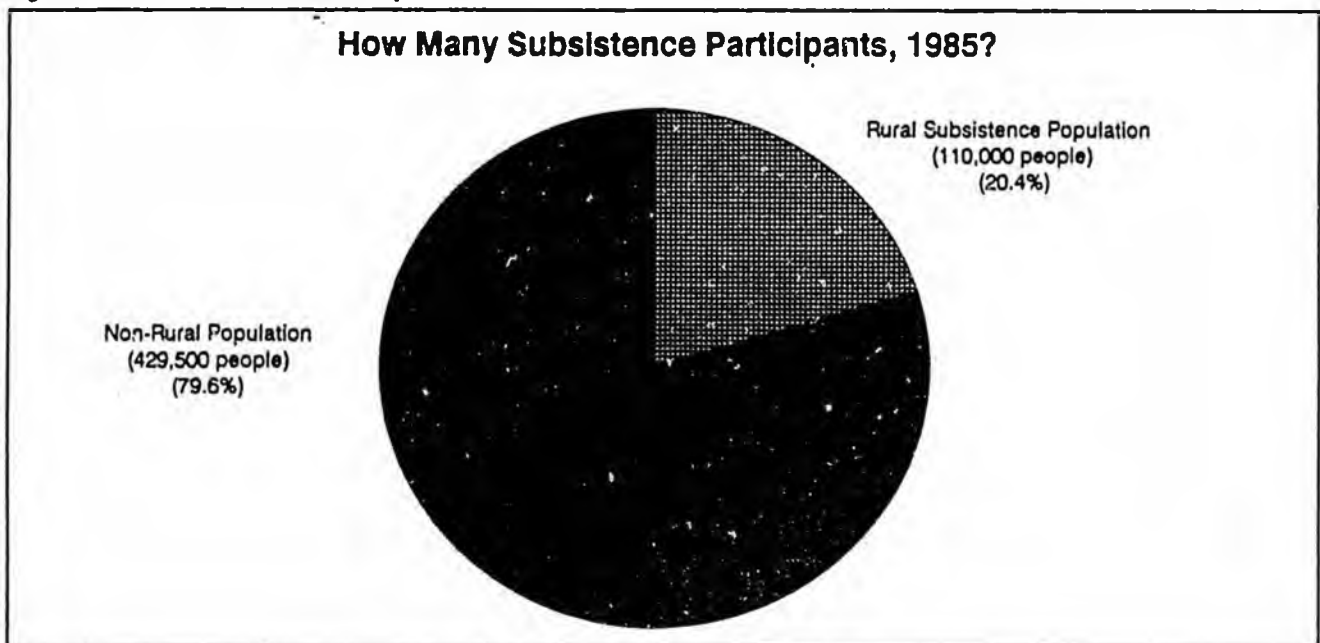
How Many People Participate in Subsistence?

During the 1980s, our best estimate is that there were about 110,075 people in about 225 communities who participated in subsistence practices to some degree. Of these, about 50,000 were Alaska Native, and about 60,000 were not Alaska Native.

This represents the number of people living in rural areas having subsistence uses, as determined by the Boards of Fisheries and Game under the laws and regulations that existed during the 1980s. By comparison, there were about 429,500 non-rural residents, who could hunt and fish under sport, commercial, and personal use regulations, but not under subsistence regulations (Fig. 1).

Our studies indicate that not all 110,000 rural residents actually harvested wild resources for subsistence. In fact, harvesting fish and game was the responsibility of a minority of people in rural areas. However, subsistence foods are widely distributed through non-market networks in rural communities. Because of non-commercial sharing, most residents in rural communities make use of subsistence foods during the course of a year to some extent. Thus, the best estimate of the number of participants in subsistence is the size of the rural population.

Figure 1. Alaska Rural and Non-Rural Population:



Summary of Recent Decisions and
Active Cases Involving Subsistence

Excerpted from

Alaska Bar Association
1989 Subsistence Update

1. *Akutan v. Hodel*, Nos. A85-701 Civ., J85-037 Civ., and J85-038 Civ. (consolidated) (D. Alaska) (von der Heydt), *appeals pending*, Nos. 88-3610, 88-3703, 88-3703 (9th Cir.)

This case was initially filed in December 1985 and involved the interpretation of Section 810 of ANILCA. Its focus was on when the Secretary of the Interior must follow procedures designed to ensure that use and/or disposition of federal lands does not unnecessarily restrict subsistence uses. Interior's position was that it had only to undertake such procedures when the proposed use or disposition had a probability of significantly restricting subsistence uses. The plaintiffs contended that Interior had to undertake the procedures whenever such use or disposition might significantly restrict subsistence uses.

The district court held that Interior erred when it applied the "probability standard in determining when to undertake the procedures. Its decision was based on the Court of Appeals' earlier decision in *Village of Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*). Both the government and the intervening oil companies appealed and the Ninth Circuit affirmed. *Tribal Village of Akutan v. Hodel*, 792 F.2d 1376 (9th Cir. 1986). The government and the oil companies petitioned for certiorari. Following the Supreme Court's decision in *Amoco Production Co. v. Village of Gambell*, 107 S. Ct. 1396 (1987) (see discussion below), the Supreme Court granted their petitions, reversed, and remanded for reconsideration in light of *Amoco*, 107 S. Ct. 1598 (1987).

On remand to the district court, the tribal villages amended their complaint to allege aboriginal hunting and fishing rights in the lease sale area. The parties then agreed to a stay of all proceedings on the Tribes' aboriginal title claim pending a decision by the Ninth Circuit in *Gambell* on remand. Meanwhile, the State, the tribal villages, and various environmental organizations sought summary judgment on their claims that the lease sale violated the Outer Continental Shelf Lands Act, the National Environmental Policy Act, and the Endangered Species Act. On January 22, 1988, the district court denied the State's claims under the OCSLA and on March 11, 1988 denied the NEPA and ESA claims. The plaintiffs appealed both decisions to the Ninth Circuit and moved the district court for an order enjoining the sale pending the appeal. On March 15, 1988, the district court granted the injunction pending appeal.

On October 5, 1988, the Court upheld the District Court's decision on all counts. It held that the Secretary properly decided not to accept the State's recommendations under OCSLA; that the Secretary could remedy any deficiencies in his Environmental Impact Statement at the exploratory or production stages of development; and that the Secretary's reasons for rejecting recommendations by the National Marine Fisheries Service to implement the ESA were not arbitrary or capricious.

Plaintiffs moved for a rehearing, with a suggestion for rehearing *en banc*, together with a request that the sale be stayed pending rehearing. The motion for stay was denied as moot shortly after the lease sale was held in mid-October; the petition for rehearing was rejected on March 9, 1989, although the Court did modify its opinion in some minor respects on that date. Plaintiffs are now evaluating whether to file an appeal in the Supreme Court.

2. *Alaska Fish and Wildlife Federation and Outdoor Council, Inc. v. Dunkel*, 829 F.2d 933 (9th Cir. 1987), *cert. denied*, 56 U.S.L.W. 3682 (April 4, 1988), *on remand*, No. J84-013 Civ. (D. Alaska) (von der Heydt)

This case was filed in the Spring of 1984 by the Alaska Fish and Wildlife Federation and Outdoor Council and the Alaska Fish and Wildlife Conservation Fund (Conservation Fund). The plaintiffs sought a declaration that two cooperative agreements (the Hooper Bay Agreement and the 1985 Goose Management Plan) entered into by the Fish & Wildlife Service, the ADF&G, AVCP and the California Department of Fish and Game violate the Migratory Bird Treaty Act, 16 U.S.C. § 712, the notice and comment provisions of the federal Administrative Procedure Act, the National Environmental Policy

Act, and provisions of ANILCA, 16 U.S.C. § 668dd, which create the Yukon Delta Wildlife Refuge.

The challenged cooperative agreements grew out of recognition by the federal and state governments that migratory birds represent an important part of the traditional Native diet on the Yukon-Kuskokwim Delta. Even though the Migratory Bird Treaty Act, through the 1978 Fish and Wildlife Improvement Act, 16 U.S.C. § 712, permits the Secretary of the Interior to authorize hunting of migratory birds in the spring and summer, it requires that the hunting be consistent with the four migratory bird treaties to which the United States is a party. The 1916 U.S./Canada treaty prohibits harvest of migratory birds in the spring and summer. Even though the Fish and Wildlife Service had long assumed that all harvesting of migratory birds between March 10 and September 1 is prohibited, it adopted a written policy in 1975 stating that subsistence hunting in Alaska during the closed season would not be punished. This enforcement policy was adopted in part because the service recognized the importance of spring waterfowl to Alaska Natives and in part because of the practical problems of enforcing the game laws in the vast reaches of rural Alaska.

Because of the recent decline of four populations of migratory birds, the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game, the California Department of Fish and Game, and the Association of Village Council Presidents entered into a cooperative agreement under which the harvest of those four species would be minimized in the spring and summer. This plan, known as the Hooper Bay Agreement, prohibited sport hunting of cackling Canada geese and reduced the hunting of white-fronted geese and black brants during the 1985 season. Enforcement was to be a joint effort by the various governmental agencies and local village councils. During 1984, the parties complied with the terms of the agreement. In 1985, the Hooper Bay Agreement was replaced with the 1985 Goose Management Plan.

The Conservation Fund initially sought an injunction to prohibit the Fish and Wildlife Service from agreeing to the taking of migratory birds during the 1984 closed season. Shortly thereafter, the intervenors (AVCP) filed a cross-claim against the Fish and Wildlife Service alleging that the 1985 Alaska Game Law rather than the Migratory Bird Treaty Act governed the subsistence hunting of migratory game birds in Alaska and until the agency promulgated regulations under the 1978 Wildlife Improvement Act, Interior had no authority to enforce the Migratory Bird Treaty Act's closed seasons. The district court denied the preliminary injunction for the 1984 season. It subsequently ruled that the 1925 Alaska Game Law repealed the Migratory Bird Treaty Act insofar as it applied to Alaska. The court dismissed all of the other claims as moot. *Memorandum and Order* (Jan. 24, 1985).

On appeal, the Ninth Circuit reversed with respect to the 1925 Game Act, pointing out that the 1916 U.S./Canadian treaty did not provide for spring and summer hunting, and thus it could not be authorized under the 1978 Fish and Wildlife Improvement Act. The court remanded the case to the district court on all of the original challenges to the plan under the Migratory Bird Treaty Act, the migratory bird treaties, the federal Administrative Procedure Act, NEPA and the section of ANILCA creating the Yukon

Delta National Wildlife Refuge. 829 F.2d 933 (9th Cir. 1987). The Supreme Court denied AVCP's petition for certiorari. 56 U.S.L.W. 3682 (April 4, 1988).

On remand, the district court found that by agreeing to language in the Hooper Bay Agreements which indicated that subsistence hunting for certain species was "ok" during parts of the period closed to hunting by treaty, the U.S.F.W.S. adopted a "substantive rule" in violation of the notice and comment procedures mandated by the APA, 5 U.S.C. § 553. The Court also found that U.S.F.W.S. failure to prepare an environmental assessment of its "substantive rule" violated the requirements of NEPA. Finally, the Court found that by adopting a substantive rule authorizing hunting during a period closed to hunting by treaty, the Secretary acted beyond the scope of his authority and thus violated the Migratory Bird Treaty Act. *Memorandum and Order* (June 29, 1988).

Meanwhile, on April 22, 1988, the Regional Director for the Fish and Wildlife Service announced a new policy on migratory bird hunting in Alaska. The policy is intended to prevent hunting of cackling Canada or emperor geese at any time; hunting Pacific white-fronted geese or black brant when they are nesting, raising young, or are flightless; taking eggs from any of the above four species of geese; using private or charter aircraft for purposes of hunting migratory birds during closed seasons; or hunting other waterfowl (ducks, geese, swans) when they are nesting, raising young or are flightless, or taking their eggs. The policy states that *limited harvest of migratory birds for food in unforeseen emergency situations will not be prosecuted* and enforcement of the policy will concentrate on "violations that have the greatest impact on waterfowl resources." As an adjunct to this policy, the Service has announced that it continues to view the Yukon-Kuskokwim Delta Goose Management Plan as an important element in the conservation of the four species.

On April 29, 1988, the Yukon-Kuskokwim Delta Goose Management Plan for 1988, which corresponds with the Service's recently adopted policy on migratory bird hunting in Alaska, was signed by the Service and Native Groups in the Yukon-Kuskokwim Delta. The state fish and game departments from both Alaska and California also signed the plan. The plan lists priorities the signatories will observe to enforce the closed season on migratory birds in spring and summer. It calls for a cooperative effort in monitoring compliance. Reports of violations will be coordinated with local village governments, which will assist in investigations conducted by the Service. The Service also agreed to make a "good faith effort to reach agreement with Canada" on an amendment to the Migratory Bird Treaty. As noted above, that treaty, signed in 1916, makes most hunting for migratory birds, even for subsistence, illegal.

3. *Association of Village Council Presidents, Tanana Chiefs Conference, Paul Philip, and Jonathon Solomon v. Alaska Board of Fish and Commissioner of Fish and Game*, No. 4BE-87-155 Civ. (Alaska Superior Court) (Fraties)

The False Pass commercial fishery occurs near the Alaska Peninsula in June, targeting mainly on sockeye salmon. Along with the sockeye salmon are incidentally harvested chum salmon, five to ten percent of which (at most) may be Yukon fall chum salmon.

In May, 1987, AVCP, Tanana Chiefs Conference, Paul Philip and Jonatho Solomon, on behalf of themselves and all other persons similarly situated, filed suit against the Alaska Board of Fish and Commissioner of Fish and Game. They asserted that the information presented to the Board of Fisheries indicated that not enough fall chum salmon would return to the Yukon in 1987 to provide for both escapement and subsistence fisheries. They argued that the federal and state subsistence laws required that the False Pass commercial fishery be closed.

The State and intervenors (Concerned Area M. Fishermen and Peninsula Marketing Association) argued that the information before the Board of Fisheries justified the board's conclusion that there was no need to close the False Pass fishery. The board did not believe it was likely that there would not be enough fall chum salmon to provide for escapement and subsistence fishing at historical levels in the Yukon. Plaintiff's request for a preliminary injunction was denied. Plaintiffs sought review by the state supreme court via a petition for review, which was also denied.

The State supplied discovery in response to some pending requests by plaintiffs and the Board of Fisheries imposed a chum salmon cap on the False Pass fishery for the 1988 season. The case was subsequently dismissed when ADF&G's estimate of fish returning proved to be inaccurate and more than enough fish returned. (See discussion of *Peninsula Marketing Ass'n v. State*, p. 21, a subsequent and related case).

4. *Bobby v. Alaska*, No. A84-544 Civ. (D. Alaska) (Holland)

This case was filed in November, 1984, by Wasilie Bobby, Sr., individually and on behalf of the people of Lime Village.

Lime Village, a community of about 40 people, alleged that the then-existing state moose and caribou regulations which applied to the Lime Village area did not adequately accommodate subsistence uses. Since that time, the Board of Game modified the regulations in several steps. The regulations ultimately reviewed by the Court imposed two closed seasons on moose (spring through mid-summer, and in the late fall) and one closed season on caribou (spring through mid-summer). The bag limits for residents of Lime Village reviewed by the court were 2 moose and 5 caribou per person.

Plaintiff argued that individual bag limits are not necessary for any conservation or management purpose in the case of Lime Village and are not consistent with the village's historic hunting patterns. Plaintiff asserted that several good hunters may supply the entire community with meat over the course of the year, rather than each household hunting for itself. Plaintiff also argued that the now-existing closed seasons for moose and caribou harvest are not consistent with ANILCA. Plaintiff asserted that under ANILCA, there should not be a closed season at all unless necessary to protect the resource. The State's position was that ANILCA regulations provide a "reasonable opportunity" for subsistence uses, but not necessarily year round seasons.

Another issue raised in this case is whether people can harvest game or fish outside the existing regulations and then successfully defend in a criminal case by asserting that the regulations did not adequately accommodate subsistence uses. This "subsistence

defense" was originally created by the Alaska Court of Appeals in *State v. Eluska*, 698 P.2d 174 (Alaska App. 1985), but was reversed by the Alaska Supreme Court in *State v. Eluska*, 724 P.2d 514 (Alaska 1986). The Supreme Court held that AS 16.05.920(a), which prohibits taking fish and game unless authorized, is controlling and is necessary in order to adhere to the constitutionally mandated sustained yield standard. The court's ruling followed, but did not refer to, the legislature's articulation in May 1986 of that same principle with respect to subsistence fishing and hunting in AS 16.05.261. The State's position was that neither the legislature nor the Alaska Supreme Court prevented people from requesting the Boards of Fish and Game to change regulations or prohibited people from challenging existing regulations in civil cases, based on a perceived lack of reasonable opportunity for subsistence.

Status of the Case: The court ruled on the pending motions for summary judgment of February 14, 1989. The judge held that seasons and bag limits are permissible under the subsistence law, but only when those seasons and bag limits are consistent with customary and traditional uses. He indicated that he would defer to the Board of Game's determinations, but that in this instance, in part because of the (at that time) constantly changing ground rules under which the Board of Game was operating, the analysis required by the state 1986 subsistence law about how much moose and caribou were needed to accommodate subsistence hunting by residents of Lime Village was not done. The judge also held that the existing Board of Game record did not reconcile a specific finding by the board that residents of Lime Village had historically harvested moose and caribou opportunistically throughout the year with the seasons contained in the regulations, nor did the record reconcile the evidence therein that the best hunters from Lime Village did most of the hunting and shared with the other villagers with the bag limits contained in the regulations. The judge also interpreted the state "no subsistence defense" statute in a way which he believed was consistent with fundamental principles which allow a defendant to challenge the validity of regulation he or she is charged with violating, and with the Alaska Supreme Court's ruling in *Eluska*; by concluding that the provision was only intended to preclude a defendant in a criminal proceeding from claiming a subsistence right in gross, outside of and apart from validly enacted subsistence regulations.

Judge Holland declined to issue a preliminary injunction, but ordered the state to submit revised regulations by June 15, 1989. The Game Board met on April 27 to review the regulations. As a result of the meeting, the regulations were amended to lift the individual bag limits, establish a 100 caribou quota, and allow year round season on caribou, except that cows and calves may not be taken in the spring or summer, not impose a moose quota, but retain closed moose seasons.

These regulations will be submitted to the court by June 15, and plaintiff at that time may express any unresolved objections.

5. *Cook v. Secretary of the Interior*, F87-42 Civ (D. Alaska) (Kleinfeld)

This case was filed on August 17, 1987, by a resident of the Yukon-Charley Rivers National Preserve who lives a subsistence lifeway. He alleges that a fly-in trapper from Eagle, Alaska has engaged in trapping activities within the area he claims as his trapline, depleting furbearer resources and negatively affecting his own trapping efforts. The basic

legal issue presented by the case is whether the National Park Service has any legal obligation under Title VIII of ANILCA to provide affirmative protection to subsistence users on Park Service lands.

The plaintiff takes the position that Title VIII of ANILCA imposes upon the Secretary of the Interior the affirmative duty to protect the plaintiff's subsistence uses. Plaintiff contends that subsistence-trapline management implicates land-use and land-management policy with respect to which NPS, as land manager, has jurisdiction and principal responsibility. Even though the Park Service's regulations authorize it to declare plaintiff's subsistence trapline off-limits to all other trappers (36 C.F.R. § 13.40), or to prohibit aircraft from operating on his trapline for the purpose of trapping, § 13.13, the Secretary argues that this is a subsistence-resource "allocation" issue over which jurisdiction has been confided exclusively in the State. Under the Secretary's theory, the federal government has no authority to protect subsistence users in the National Parks.

On October 14, 1987, the plaintiff moved for a preliminary injunction to require the Secretary to take all actions necessary to protect his trapline from encroachment by any other trapper during the marten season or until such time as the merits of the case could be decided. Judge Kleinfeld denied the plaintiff's request for a preliminary injunction on November 20, 1987. The government then moved for summary judgment, which the plaintiff opposed. At the conclusion of arguments on the motion for summary judgment on June 23, 1988, Judge Kleinfeld noted that while the question of whether the Park Service or the State had jurisdiction to protect subsistence traplines was a complex and difficult issue, the case had to be dismissed as moot since the fly-in trapper had promised, under oath, not to trap on plaintiff's line. The dismissal was not appealed.

6. *Didrickson v. United States Department of Interior*, No. A85-336 Civ. (D. Alaska) (Holland)

This case, formerly captioned in the name of the original plaintiff, Katelnikoff, was brought pursuant to the Marine Mammal Protection Act of 1972 (MMPA). Both Marina Katelnikoff and Didrickson sought the return of a number of articles they had fashioned out of sea otter pelts. The articles were confiscated by federal enforcement agents on the ground that they were not "authentic native articles of handicrafts and clothing" within the meaning of the Native handicraft exemption to the MMPA, 16 U.S.C. § 1371(b), as defined by controlling federal regulations.

At stake is the proper interpretation of the Alaska Native exemption to the MMPA and its regulations. The MMPA, enacted in 1972, established a comprehensive moratorium on the taking of marine mammals but created an exception for the taking of marine mammals by Alaska Natives for subsistence purposes and for making "authentic native articles of handicrafts and clothing." 16 U.S.C. § 1371(b). The regulation implementing this exemption defines "authentic native articles of handicrafts and clothing" to include only those items which "were commonly produced on or before December 21, 1972." 50 C.F.R. § 18.3.

Plaintiffs argued that the limitation in the regulation was inconsistent with the MMPA in that it focuses on whether the final craft *item* produced was traditional rather

than whether the production *technique* was traditional. Plaintiffs argued that an item can be "authentic" even if it was not commonly produced prior to 1972.

In July 1986, Judge Holland rejected these arguments and upheld the validity of the regulation largely based on deference to agency interpretation. Ms. Katelnikoff was dismissed from the lawsuit to pursue her administrative remedies.

Judge Holland's decision upholding the regulation as consistent with the MMPA led Didrickson to amend his complaint to allege that the regulation is unconstitutionally vague because no one, not even the enforcement agents, can determine what is permitted by the regulation. Sea otter use by Natives has been limited since the mid-1700's due to bans imposed by the Russians and then by the United States and also due to population declines caused by Russian overhunting, and it is difficult or impossible to determine exactly what use Natives made of sea otter at that time.

Didrickson has moved for summary judgment on his constitutional claim. In denying the government's motion to dismiss, Judge Holland indicated that problems with the regulation and its enforcement call for an administrative resolution. In response, the Fish and Wildlife Service instituted a formal rulemaking proceeding, proposing to change its regulatory definition to totally prohibit Native use of sea otter for handicrafts and clothing. This rule is based upon Fish and Wildlife Service's conclusion that there has been no recent use of sea otter by Natives and no recent sales by Natives of sea otter items. The comment period on the proposed rule will continue until November 30, 1989. Public hearings are planned for October, 1989, in several coastal villages.

Meanwhile, Katelnikoff (now by marriage, Beck) lost her administrative hearing as to all items crafted from sea otter pelts except hats. Having exhausted her administrative remedies, she has moved to intervene in the federal court litigation.

7. *Gambell v. Lujan*, ___ F.2d ___ (9th Cir. 1989), *petition for rehearing pending, on remand*, Nos. 83-3735; 83-3781 (D. Alaska) (von der Heydt)

On March 4, 1983, the tribal villages of Gambell and Stebbins sued the Secretary of the Interior alleging that he had violated either their aboriginal hunting and fishing rights or Section 810 of ANILCA in holding Outer Continental Shelf Lease Sale 57. Oil companies interested in bidding on the sale intervened.

The Tribes' principal claim was that ANCSA and Title VIII of ANILCA had to be consistently interpreted by the Secretary. ANCSA extinguished Native hunting and fishing rights "in Alaska." Title VIII applies to Native hunting and fishing rights "in Alaska." The Tribes argued that the two acts had the same geographic scope. If both acts applied only within the territorial boundaries of the State, then they retained their aboriginal hunting and fishing rights outside the territorial boundaries. Alternatively, if both acts applied outside the territorial boundaries of the State, then the Secretary had violated Section 810 in holding the sale.

Judge von der Heydt granted summary judgment to the government and the intervening oil companies and dismissed the suit. The Ninth Circuit reversed in part and affirmed in part. It held that ANCSA applies to the OCS and operated to extinguish

aboriginal hunting and fishing rights in this area. It also held that ANILCA applied to the OCS and since the Secretary had not complied with Section 810 of ANILCA, the court reversed and remanded for a determination as to whether the sale should be voided. *Gambell v. Clark*, 746 F.2d 572 (9th Cir. 1984) (*Gambell I*).

In April, 1985, a companion case, *Gambell v. Hodel*, was filed challenging OCS Lease Sale 83 in the Navarin Basin, alleging both that the Secretary had failed to comply with Section 810 of ANILCA in holding the sale as well as that the Secretary's decision to lease the area violated his trust responsibilities to protect subsistence uses and resources.

The plaintiffs in both cases moved the district court for a preliminary injunction against exploratory drilling pending the district court's determination on the merits. The motions were consolidated. Although the district court found that the Department of the Interior did not comply with Title VIII of ANILCA in holding the lease sales, it ruled that a preliminary injunction was not warranted. The court reasoned that the nation's quest for new oil and gas resources and energy independence outweighed the harm that might result to subsistence users from continued exploratory activities on the leases.

On appeal the Ninth Circuit reversed the district court, finding that the tribal villages had a certainty of prevailing on the merits and ordered the oil companies to immediately cease all operations in the leased areas. Its ruling rested on the principle that under Section 810 the national interest in the subsistence lifestyle of Alaskan Natives outweighs the competing interest in the rapid development of OCS oil leasing in Alaska. *Gambell v. Hodel*, 774 F.2d 1414 (9th Cir. 1985) (*Gambell II*).

The government and the oil companies petitioned for certiorari. The tribal villages cross-petitioned on the aboriginal title issue decided in *Gambell I*. The Supreme Court granted both the petitions and the Tribes' cross-petition. It reversed the lower court's holding that ANILCA applied to the OCS and vacated the ruling that ANCSA applied to the same area and remanded the case for further proceedings on the aboriginal title claim. *Amoco Production Co. v. Gambell*, 107 S.Ct. 1396 (1987).

On remand, the Court of Appeals reversed the district court's original judgment in *Gambell I*, holding that aboriginal subsistence rights of Alaska Natives in the OCS were not extinguished by ANCSA. It also rejected the Secretary's and the oil companies' arguments that (1) the federal government's paramount interests in the OCS extinguished aboriginal rights; (2) that the United States had not assumed sufficient control over the OCS so as to constitute sovereignty which requires recognition of aboriginal rights; and (3) that recognition of aboriginal rights would be inconsistent with principles of international law. On remand, the district court must decide (1) whether the Villages possess aboriginal rights in the OCS; (2) if so, whether the drilling and other activities by the oil companies will interfere significantly with the Villages' exercise of those rights; and (3) whether the Outer Continental Shelf Lands Act extinguishes aboriginal subsistence rights in the OCS. *Gambell v. Lujan*, ___ F.2d ___ (9th Cir. 1989) (*Gambell III*).

The oil companies and the Secretary have petitioned for rehearing.

8. *Hanton v. Barton*, No. J88-025 Civ. (D. Alaska) (von der Heydt)

This case was filed in July 1988 on behalf of six Native residents of Hoonah and one non-Native resident of Angoon, all of whom hunt near Hoonah. Two of the plaintiffs are chiefs of Hoonah-area Tlingit clans - all depend on the resources, particularly the deer, of the Tongass National Forest. Their suit attacks a Forest Service decision to authorize four years of logging and roadbuilding near Hoonah without first holding the hearings and making the findings required by § 810 of ANILCA, 16 U.S.C. § 3120. That statute requires Federal agencies to consider the effects on subsistence of major land use decisions. If a proposed action may impose significant restrictions on subsistence uses of the public lands, the Federal agency involved must make specific findings about the necessity of the action and the measures which will be taken to minimize its effect on subsistence uses.

Plaintiffs filed a motion for preliminary injunction. The Alaska Pulp Corporation, the principal beneficiary of the logging program, intervened in the case. Plaintiffs argued that the Forest Service applied the wrong standard in determining that its logging program will not significantly restrict subsistence uses in the Hoonah area. They also asserted that the Forest Service failed to consider the impacts of related actions, and based on the information available to it, should have concluded that its logging program would result in significant restrictions to subsistence uses, thus invoking the procedures outlined in §810 (a) (1) - (3). The plaintiffs also alleged violations of the National Environmental Policy Act, the National Historic Preservation Act, and the Administrative Procedure Act.

On November 14, 1988, the district court denied the plaintiffs' request for a preliminary injunction. Although the court found that the plaintiffs had shown a "near certainty" of success on the merits of three of their five claims, the court found insufficient proof of irreparable harm. Instead of granting an evidentiary hearing, the court denied the injunction and suggested that the parties agree on the formulation of the terms of injunctive relief pending compliance by the Forest Service with its obligations under NEPA and ANILCA. Unable to reach agreement, the plaintiffs filed an appeal and moved the district court for an injunction pending appeal. Prior to the hearing on plaintiffs' motion, the parties agreed to the entry of an injunction.

The injunction requires the Forest Service to conduct the hearings mandated by ANILCA § 810 and to prepare a supplemental environmental impact statement. Pending completion of the hearings and supplemental review, logging and roadbuilding are enjoined in the most critical subsistence use areas, including sixteen cutting units in the Hoonah area. The injunction also prohibits creation of a log dump in Whitestone Harbor. The § 810 hearings are scheduled for June, 1989.

9. *John v. Alaska*, No. A85-698 Civ. (D. Alaska) (Holland)

This case was filed in December, 1985, by Katie John, Doris Charles, and the Mentasta Village Council. Since 1964, the State limited subsistence fishing in the Copper River Basin to that portion of the Copper River below its confluence with the Slana River. In 1984, Katie John and Doris Charles, residents of Mentasta and Dot Lake, respectively, requested the Board of Fisheries to open a subsistence fishery at the old village site of

Batzulnetas, where the proponents have pending and patented (respectively) Native allotments. The board rejected the proposal, voicing concerns about fishing on stocks of fish at or near their spawning grounds ("terminal fisheries"). This lawsuit followed.

Plaintiffs claim that the Batzulnetas site is a customary and traditional subsistence salmon fishing site and that closure of this area is not required to protect sustained yield. The case involves a complex river system (the Copper River, in which there are at least 124 separate sockeye salmon stocks).

Questions are raised regarding what constitutes a "reasonable opportunity" to obtain subsistence salmon and whether this is the applicable standard under ANILCA, what steps the State must take to determine whether a fishery can be conducted without jeopardizing sustained yield, and what standard of review the federal court should apply in reviewing State subsistence regulations, among others. There is also a question of whether the State of Alaska has jurisdiction to regulate fish uses on a Native allotment.

After completion of extensive discovery and filing by plaintiffs of a motion for summary judgment, the parties entered into a stipulation in 1987 to stay the case pending the Board of Fisheries' review of a new proposal from plaintiffs for a subsistence fishery. The State agreed to allow plaintiffs a carefully structured interim subsistence fishery for the 1987 season.

In its winter 1987-88 meeting, the board acted on plaintiffs' proposal and found that the existing subsistence fishery for the Copper River provided a "reasonable opportunity" for plaintiffs to meet their subsistence uses; however, the board also found that a subsistence fishery in excess of "reasonable opportunity" could be authorized at Batzulnetas without jeopardizing sustained yield. The board adopted a regulation establishing a subsistence fishery at Batzulnetas and setting the season, methods of take, and scope of this new fishery. Cross motions for summary judgment were filed on whether the new regulations are adequate under ANILCA. Plaintiffs claim that the Board was required to establish a subsistence fishery at Batzulnetas which was not categorized as extra to reasonable opportunity. Those motions are still pending.

Meanwhile, plaintiffs have filed a motion for a preliminary injunction which seeks more fishing opportunities for the summer of 1989 at the site than the 2-3 1/2 days currently provided in the regulations.

10. *Kenaitze Indian Tribe v. State of Alaska*, 860 F.2d 312 (9th Cir. 1988), petition for cert. filed, 57 U.S.L.W. 3689 (U.S. April 18, 1989) (No. 88-1642), on remand, No. A86-367 Civ. (D. Alaska) (Holland).

This case was filed on July 15, 1986, under §807 of ANILCA by the Kenaitze Indian Tribe. The plaintiff members consist of the descendants of aboriginal inhabitants of the Cook Inlet area. The Tribe alleged that the State's definition of "rural area" in its 1986 subsistence law, Ch. 52, SLA 1986, was inconsistent with the meaning of the term "rural" in Title VIII of ANILCA. Sections 803 and 804 of ANILCA provide an absolute hunting and fishing priority for rural Alaska residents. The State's definition of "rural area" extends the priority only to those who live in "a community or area of the state in which the

noncommercial, customary, and traditional use of fish or game for personal or family consumption is a principal characteristic of the economy of the community or area. Plaintiff claimed that the term "rural" had to be given its ordinary meaning -- that of a geographic area with a small population -- and that it could not be defined so as to restrict the priority to only those who live in an area where subsistence activities are a principal component of the economy. It was their position that tribal members living on the Kenai Peninsula are rural residents and their customary and traditional harvests of fish and game for subsistence uses are entitled to preference over competing non-subsistence uses.

Plaintiff filed a motion for preliminary injunction in July 1986. On August 14, 1986, the State of Alaska filed a motion to dismiss, arguing that Section 807 of ANILCA does not confer jurisdiction upon the federal court to hear a challenge to the State's "laws of general applicability" (i.e., statutory provisions that comply with Section 805 and allow the State to have management jurisdiction over subsistence uses on federal lands). The State argued that § 807 only grants jurisdiction to challenge the State's implementing regulations. The court denied the State's motion to dismiss. *Memorandum of Decision*, February 13, 1987.

In the meantime, the Tribe filed a motion for partial summary judgment and the State filed a cross motion for summary judgment on the underlying question of whether the state statutory definition of "rural area" complies with ANILCA. On July 9, 1987, Judge Holland denied the Tribe's request for a preliminary injunction and granted the State's motion for partial summary judgment. Essentially deferring to the State's interpretation of the term "rural" (and the Department of the Interior's "approval" of the State's 1986 subsistence law), the court found that the State's definition of "rural area" was not inconsistent with Section 804 of ANILCA.

On October 24, 1988, the Court of Appeals reversed the lower court's denial of the Tribe's request for a preliminary injunction. The court first concluded that it owed no deference to the interpretation adopted by the Department of the Interior or the State of Alaska. Interpreting the statute's meaning *de novo*, it found that Congress used the term "rural" in its plain and ordinary sense to refer to areas of Alaska that are "sparsely populated." It noted that adopting the State's "contorted definition" of rural would "materially change the sweep of the statute . . . and lead to an inconsistency within the statute." The court noted that giving the term rural its conventional meaning avoided an internal inconsistency. Relying on *Amoco Production Co. v. Gambell*, 107 S. Ct. 1396 (1987), the court refused to resort to the legislative history of ANILCA in search of a contrary meaning. Concluding that the State's definition of rural was inconsistent with ANILCA, the court reversed and remanded the case to the district court for entry of a preliminary injunction.

On denial of the State's petition for rehearing, the Court of Appeals amended its decision on January 4, 1989, to specifically address the State's argument that article IV, §4 of the U.S. Constitution and the Tenth Amendment preclude a federal court from ordering a state to amend its laws to make them consistent with ANILCA. The Court noted that this proposition had no application since the court did not purport to be directing the state to amend its laws: "it is free to eschew any further entanglement with the federal government

by advising the Department of the Interior that it is withdrawing from its role in administering ANILCA."

The State has petitioned for certiorari and plaintiff's opposition is due to be filed in late May, 1989. Since neither the Court of Appeals nor the Supreme Court would agree to stay the mandate pending review of the case on certiorari, the case has been remanded to the district court for the entry of a preliminary injunction. At the request of the district court, both parties submitted proposals for a preliminary injunction in late March. The State's proposed preliminary injunction was that it be required by May 15, 1990, to either demonstrate that its laws are consistent with ANILCA, or, advise the Department of the Interior that it is withdrawing from its role in administering ANILCA. The Tribe proposed a detailed plan for establishing a subsistence fishery for its members on the Kenai Peninsula.

On April 26, 1989, Judge Holland rejected both proposals and entered a preliminary injunction ordering the State "to elect, on or before May 15, 1989, whether it will or will not afford plaintiff on an interim basis priority over all other consumptive uses for the subsistence use of hooligan and all species of salmon on the Kenai Peninsula." *Preliminary Injunction* at 10. Assuming the State elects to continue to comply with ANILCA, the court ordered the State to afford members of plaintiff tribe a priority over all other consumptive uses, for the subsistence use of hooligan and all species of salmon. To that end, the Board of Fisheries was directed to, on or before May 30, 1989, adopt emergency regulations to effect such priority. The court also gave the parties the alternative of entering into a consent preliminary injunction to the same general effect.

Following the remand of this case for the entry of a preliminary injunction, the State filed a series of motions: motion to dismiss for lack of jurisdiction under the Eleventh Amendment; renewed motion to reconsider denial of its motion to dismiss for lack of jurisdiction under ANILCA §807; motion to dismiss with respect to salmon fishing for lack of standing; and motion to remand the question of whether the Tribe's uses are customary and traditional to the Board of Fisheries. In the event that the jurisdictional motions were denied, the State also moved to have the issues certified for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). On May 4, 1989, Judge Holland denied all of the State's motions.

11. *McDowell v. Collinsworth*, No. 3AN-83-1592 Civ. (Alaska Superior Court)
(Serdahely)

This lawsuit was filed in 1983 by Sam McDowell, Dale Bondurant, Harold Eastwood, and Ronald Mahle, challenging the constitutionality of the 1978 State subsistence law. The State's 1978 law had been interpreted by the joint boards of fisheries and game as defining subsistence uses as "customary and traditional uses" by rural residents, although the statutes did not contain the word "rural." AFN intervened on behalf of the State. The State was awarded summary judgment on a number of constitutional allegations, and briefing was about to begin on the remaining equal protection and due process claims when the Alaska Supreme Court decided *Madison v. ADF&G*, 696 P.2d 168 (Alaska 1985).

Madison held that in 1978 the legislature had not limited subsistence uses to rural residents and that the boards had incorrectly interpreted the 1978 law. The *McDowell* lawsuit was put on hold until the legislature enacted a new subsistence law in 1986 (Ch. 56, SLA 1986), because until that occurred, it was not known how or if subsistence uses would be defined in state law or who would constitute the class of people eligible for them.

After the 1986 law was enacted, plaintiffs amended their complaint, again challenging the constitutionality of the new law. (Also, two additional lawsuits, *Bondurant v. State* and *Sims v. State* were filed, raising similar challenges. These two cases were consolidated with *McDowell*). The main issue (from the State's perspective) is whether people who live in rural areas as defined by the law are situated differently (with respect to their use of fish and game) from people in other parts of the state.

On cross motions for summary judgment, Judge Serdahely issued, on January 25, 1988, a 25 page memorandum decision finding for the State on all counts, viz, that the State subsistence statute does not violate: Article VIII, Sections 2 and 3 ("maximum benefit" and "common use"); Article VIII, Section 15 ("exclusive right of fishery"); due process, and equal protection provisions of the State Constitution.

An appeal to the Alaska Supreme Court was filed and oral arguments were heard on April 20, 1989.

12. *Native Village of Tanana v. Cowper*, No. F83-034 Civ., and *Tanana Chiefs Conference, Inc. v. Cowper*, No. F83-402 Civ. (D. Alaska) (Kleinfeld)

These cases were filed in 1983 and present the issue of whether the State's prosecution of five residents of Tanana and two residents of Ruby for taking a moose during closed season violates Section 804 of ANILCA. The cases were consolidated by the court, and both parties filed summary judgment motions. The motions focused on whether the areas involved were Indian country; whether there were exemptions from State authority over fish and game for Native activities sponsored by a Native council; whether P.L. No. 280 precludes State regulation of Native fishing and hunting; and whether there was any interference with subsistence rights under ANILCA or with First Amendment rights.

On November 6, 1987, the court ruled as follows:

1) That ANILCA'S subsistence protections are limited to direct personal or family consumption or barter or customary trade; and plaintiffs presented no evidence that the taking was for one of these reasons. Judge Kleinfeld also found that there was no evidence that the takings took place on the lands to which ANILCA applies.

2) The court declined to rule on whether Tanana or Loudon are Indian country because plaintiff failed to present any evidence about where the takings took place. Also, the court declined to rule on whether State authority may be exercised within Indian country, until the predicate -- a showing of where the events took place -- was made. Judge Kleinfeld noted that based upon the record, he was inclined to think that Tanana was not Indian country and not a dependent Indian community, but it was not necessary for the court to reach that issue.

3) The court found that Tanana Chiefs has standing to assert the rights of individual Natives, citing *UAW v. Brock*, 106 S. Ct. 2523 (1986).

4) As to P.L. 280, Judge Kleinfeld held that the exemption from state criminal laws contained in 18 U.S.C. § 1162(b) for hunting and fishing rights of Natives under "Federal treaty, agreement, or statute" does not apply where there is no treaty or statute. He concluded that the State may exercise jurisdiction over fish and game offenses even in Indian country in the Tanana area. The court based its ruling in part on *Kake v. Egan*, 369 U.S. 60 (1962) which it construed to hold that off-reservation hunting and fishing is subject to state regulation. The court further held that *California v. Cabazon Band of Mission Indians*, 107 S. Ct. 1083 (1987), did not apply because this case involved criminal offenses, unlike the regulatory bingo offenses at issue in *Cabazon*.

5) The judge denied plaintiffs' motion for summary judgment on the freedom of religion issue, finding that proof was lacking of several essential elements of the claim, in particular the religious nature and necessity of memorial potlatches.

In 1989, *Native Village of Tanana* was dismissed by stipulation. The village submitted a proposal to the Board of Game, asking that subsistence regulations be adopted allowing the community to take moose for a traditional festival, Nuchalwoyya. During its March 1989 meeting, the board found that the community had a customary and traditional use of moose for that purpose, and adopted the requested regulation.

In 1988, the state filed a motion for summary judgment in *Tanana Chiefs Conference* on the outstanding equal protection and due process claims. At issue is the lack of regulations allowing memorial potlatches. Tanana Chiefs Conference has never asked the Board of Game to authorize that use as a subsistence use. In response to the state's motion, TCC again raised the freedom of religion issue, basically contending that the equal protection and due process arguments must be viewed with strict scrutiny by the court because of the first amendment. The state's position is that plaintiff still has not demonstrated the religious nature and necessity of memorial (as contrasted to funeral) potlaches. Oral argument is scheduled for June, 1989.

13. *Payton v. State*, 3AN-88-12223 Civil (Ripley)

This case was filed in 1988 and challenged the finding by the Board of Fisheries that residents of the Skwetna area (a rural area across Cook Inlet from Anchorage) did not have customary and traditional uses of salmon, and consequent failure to adopt subsistence regulations for that area.

Plaintiffs alleged a number of violations: (1) that the finding was arbitrary and capricious, because the Board of Game had authorized subsistence moose hunting there, (2) that the finding was not supported by the record; (3) that the action violated ANILCA (though the case was filed in state court); (4) that the board used an impermissible durational residency requirement; (5) that the board applied its criteria in a way that discriminates on the basis of race (in favor of Alaska Natives); and, (6) that the composition of the board violated due process, because of the presence of commercial and sport fishermen.

The court awarded summary judgment to the state on March 15, 1989. A final judgment was entered in early April, and the time for an appeal had not run as of this writing.

14. *Peninsula Marketing Association v. State of Alaska*, 3AN-88-12324 Civil (Hunt)

This case was filed in the late fall of 1988, challenging the False Pass chum salmon cap which the Board of fisheries had imposed, beginning in June 1988. For the facts and background of this case, see *Association of Village Council Presidents*, p. 9. Plaintiffs in this case include the intervenors in that case. The chum cap is challenged on a number of grounds. The Yukon-Kuskokwim Fisheries Task Force and 4 residents of western Alaska have intervened on the State's side to support the cap, and have filed a cross claim against the State, arguing for the same reasons put forward in *Peninsula Marketing Association* that the False Pass fishery should be closed. Cross motions for summary judgment have been filed on plaintiffs' claims (not intervenors), and argument on those motions is scheduled for early June.

15. *Sierra Club v. Penfold*, 857 F.2d 1307 (9th Cir. 1988), on remand, A86-083 Civ. (D. Alaska) (von der Heydt)

This case challenges BLM's approval of placer mining plans. In addition to claims under NEPA and BLM's regulations on the procedure for approving and receiving notice of mining activities on BLM administered lands, plaintiffs asserted claims under Section 810 of ANILCA. The subsistence issues of interest include the following:

a) *Subsistence Reviews Must Evaluate Cumulative Impacts*

In a published decision on May 28, 1987, the federal district court held for the first time that Section 810 of ANILCA, 16 U.S.C. § 3120, requires a federal land management agency to consider cumulative impacts when determining whether a federal action may significantly restrict subsistence uses. *Sierra Club v. Penfold*, 664 F. Supp. 1299, 1307 (D. Alaska 1987). The court drew an analogy to NEPA law and held that the "common-sense principles" of NEPA, which require analysis of cumulative impacts when agencies determine the environmental significance of federal actions, would be applied to subsistence evaluations too.

On the facts of the case, the court then held that the cumulative impacts of multiple placer mines on subsistence uses of Birch Creek were "significant" and triggered the notice and hearing requirements of § 810(a)(1)-(3). The court specifically found that mineral development "severely degrade[d]" Birch Creek Village's subsistence fishery and "interfere[d] with use of river water for drinking by village residents." The court also held that the cumulative impacts of placer mining on Minto had been unlawfully ignored and remanded the case to the BLM for a determination of the significance of these impacts.

b) *Mining Regulations Invalid for Failure to Consider Subsistence Impacts*

In a subsequent unpublished decision of November 6, 1987, the court invalidated 1983 amendments to BLM's mining regulations because, among other reasons, the

amendments were promulgated without a § 810 evaluation. *Memorandum and Order* 31-34 (Nov. 6, 1987). These amendments had the effect of allowing mines on "withdraw lands" (lands closed to new mineral entry) to operate under "notices" without subsistence review if the mines kept their operations under five acres.

On motion for reconsideration, the court also excused the failure of the subsistence plaintiffs to exhaust administrative remedies, relying on the point that the failure to exhaust could be attributed to the agency's failure to provide the notice required by Section 810. *Minute Order* (Nov. 12, 1987) ("the Secretary cannot shield his complete failure to comply with § 810 by arguing that the very groups intended to benefit indirectly from the notice provisions of the statute should have reminded him of his statutory duty").

c) *Village Councils Have Parens Patriae Standing*

A final decision of note is the unpublished decision of November 21, 1986, where the court considered and rejected a BLM argument that the IRA and village council plaintiffs in the case lacked standing to sue on behalf of their residents. *Memorandum and Order* at 24-26 (Nov. 21, 1986). The court held that *parens patriae* standing is appropriate when a sovereign entity sues "to prevent a violation of federal laws by federal agencies." *Id.* at 25. The court then went on to assume that IRA and village councils have sovereign attributes, without deciding the question. *Id.* at 26. Finally, the court ruled that environmental organizations do not have standing to bring Section 810 actions.

On September 21, 1988, the Court of Appeals affirmed the lower court in all respects. Of primary importance was its conclusion that BLM violated NEPA and § 810 of ANILCA by failing to prepare EIS's addressing the cumulative impact and effect on subsistence uses of all placer mines in each of the four watersheds involved in the litigation (Birch Creek, Beaver Creek, Fortymile River and Minto Flats). The Appeals Court left in place the district court's injunctions prohibiting approval of any placer mines in the four watersheds pending completion of the EIS's.

Following the Court of Appeals decision, BLM completed its final Environmental Impact Statements for all four drainages and then moved to lift the injunctions. At plaintiff's request, the district court agreed to delay its ruling on the motion until BLM issued its final decisions. Final decisions have now been issued for all but the Minto Flats drainage, and plaintiff is evaluating the adequacy of the EIS's and the final decisions before deciding whether to oppose the government's motion to lift the injunctions.

16. *Tanana Fish and Game Association v. State of Alaska*, No. F88-04 Civ. (D. Alaska) (Kleinfeld), *on appeal*, No. 88-4112 (9th Circuit).

This case was filed on February 10, 1988 by the Tanana Fish and Game Association, an unincorporated association organized to represent and advance the interests of users of fish and wildlife resources in and around the Village of Tanana. Plaintiff alleges that its members have been selling the roe from their subsistence harvests of Yukon River (fall chum) for at least 20 years. Currently the sale of roe from subsistence taken salmon is illegal under 5 AAC 1.010 (d). Plaintiff asserts that the regulation violates

Section 804 of ANILCA, which mandates that customary and traditional subsistence use including customary trade, be given priority over competing non-subsistence uses. Based on the fact that the definition of "subsistence uses" in both state and federal law contains a "customary trade" component which has been interpreted to mean limited exchanges for cash not amounting to a significant commercial enterprise, plaintiff seeks to have the State recognize the right of the residents of Fishing District 5 of the Yukon River to engage in customary trade of Yukon River salmon roe.

The State moved to dismiss the case, arguing that plaintiff had not exhausted its administrative remedies since it had never asked the Board of Fisheries to authorize the sale of subsistence salmon roe in Fishing District 5 of the Yukon River. On April 29, 1988, the day after the Board had scheduled a special Memorial-Day weekend meeting in Fairbanks to consider changing the management plan for commercial fishing on the Tanana River (District 6), plaintiff petitioned the Board to schedule its subsistence-roe-sale proposal for a hearing at the same meeting. The Board rejected the petition. Subsequently, the Tanana local fish and game advisory committee unanimously endorsed the proposal.

Meanwhile, on June 6, plaintiff filed a motion for a preliminary injunction and summary judgment. Plaintiff sought a preliminary order allowing its roe-sale proposal to take effect for the fall-chum season beginning August 15, and to restrain the State from bringing criminal charges against any of its members. (Plaintiff later withdrew its motion to enjoin criminal prosecutions when it became clear that no such charges were likely to be filed). Plaintiff also moved for expedited consideration of the motion for a preliminary injunction.

The court refused to expedite consideration of plaintiff's request for preliminary relief, and proceeded instead with a hearing on the State's motion to dismiss. Following arguments on August 4, 1988, Judge Kleinfeld granted the State's motion to dismiss on the ground that plaintiff failed to exhaust administrative remedies. The court ruled that exhaustion of the State's rulemaking process -- both the normal proposal process and the local advisory committee/regional council process -- were jurisdictional prerequisites to a suit pursuant to §807 of ANILCA challenging the validity of a previously promulgated regulation. Plaintiff appealed the decision. Briefing was completed in mid-February, but oral argument has yet to be scheduled.

In the meantime, plaintiff presented its customary roe-trade proposal to the Board of Fisheries for consideration at its regular fall meeting. Following hearings in December, 1989 in Anchorage, the Board rejected the proposal.

17. *Tarnai v. Fisher & Patton*, No. F87-68 (D. Alaska) (Kleinfeld)

Alex Tarnai is a trapper who is the sole permanent resident of the Nowitna National Wildlife Refuge. His residency on the Refuge area predates ANILCA and the creation of the Refuge. He holds cabin permits from the Fish and Wildlife Service for one cabin which is his residence and two other "line" cabins for his traplines. In January 1986, Tarnai invited a friend to visit and stay with him at his home. Prior to the friend's arrival, defendants Fisher and Patton (the refuge manager and assistant manager) informed the

friend that she would not be allowed to stay with Tarnai in his home. Fisher went to Tarnai's home in late December and informed Tarnai that the friend would not be allowed to stay with Tarnai in his cabin.

Plaintiff's friend was forced to spend her visit in a wall tent near Tarnai's cabin until she could be moved off the Refuge. Tarnai's subsistence trapping work was disrupted and his friend had to spend the rest of her visit off the Refuge. During her visit, the defendant Fish and Wildlife Service officials conducted and/or caused to be conducted an intensive aerial surveillance of Tarnai's cabins and traplines on the Refuge, and on at least three occasions the Fish and Wildlife Service officials and/or persons acting at their direction conducted warrantless searches of Tarnai's cabins, including his home, without his permission.

The plaintiff is suing for declaratory relief and compensatory and punitive damages. He seeks a declaration that he enjoys the same constitutional rights with respect to his home on the Refuge that apply to any person who does not reside there, including association, privacy, to be secure from unreasonable and warrantless searches and seizures, and procedural and substantive due process of law; that Section 1303 of ANILCA which gives individuals living in the Refuge the right to five year renewable permits to continue to live in the Refuge further protects these rights; and that these rights were violated by the actions of the defendants.

Discovery is virtually complete. The government has filed a motion for summary judgment and the plaintiff has moved for partial summary judgment against the government officials in their official capacity. The judgment would declare that the plaintiff enjoys the same constitutional freedoms of association and privacy in the use and occupancy of his home and trapline cabins as persons who do not live in a National Wildlife Refuge. The court has scheduled a hearing on the motions for July 6, 1989.

18. *Tenakee Springs v. Courtright*, J86-024 Civ (D. Alaska) (von der Heydt)

This case involves a challenge to the Forest Service approval in 1980 of a 5-year timber harvest and road construction plan by Alaska Pulp Corp. on Chichagof, Baranof and Kuiu Islands. The plaintiffs in the case are the Sierra Club, Southeast Alaska Conservation Council, the Wilderness Society, and the City of Tenakee Springs. In addition to claims relating to NEPA compliance, the plaintiffs also claimed that the Forest Service failed to comply with Section 810 when it determined to "withdraw, reserve, lease or otherwise permit the use, occupancy, or disposal" of public lands.

The case raised two issues relative to ANILCA. The first is what entities have standing to bring actions for a violation of Section 810. The other relates to the applicability of Section 810 to the 5-year harvest plan, since it was adopted prior to ANILCA, but implemented afterwards. The government argued that mere implementation of the decision to "withdraw, reserve, lease or otherwise permit the use, occupancy, or disposal" of public lands did not trigger Section 810. It argued that the determination to authorize the roads and harvest units was made prior to the passage of ANILCA in 1980 when the Forest Service approved the 5-year plan.

The federal government argued that state-created municipalities could not *su. parens patriae*, therefore the City of Tenakee Springs had no standing to bring Section 810 actions. The plaintiffs, relying upon cases giving municipalities standing in NEPA cases, claimed they had standing by virtue of Section 802(3) which declares that it shall be a policy of Congress for federal land managing agencies to cooperate with adjacent land owners. They also argued that the City had standing because it performed land planning functions relating to subsistence with which the Forest Service actions conflicted.

Judge von der Heydt (decision June 26, 1987) agreed with the federal government and ruled that the City of Tenakee Springs had no standing to raise a cause of action under § 810. Citing *In re Multidistrict Vehicle Air Pollution M.D.L. No. 31*, 481 F.2d 122, 131 (9th Cir.), *cert. denied*, 414 U.S. 1045 (1973), the court reasoned that the City does not engage in subsistence and its indirect interest in the economic well-being of the taxpayer base was not sufficient to confer standing. The court made no finding as to whether the Forest Service had complied with §810, but cautioned "[s]ince other plaintiffs not now parties to this suit could raise the Section 810 issue at a later time, prudence would dictate that the Forest Service reevaluate whether it has complied with the section."

On the NEPA issues, the court enjoined further roading and harvest beyond the existing roads in a given area pending preparation of a supplemental EIS. Completion of the Supplemental EIS -- originally projected for May, 1989 -- has been delayed because of the *Hanlon* litigation. (See *Hanlon*, p. 15.)

19. *Tukisarnute Native Community Council v. Conquergood*, A85-604 Civ. (D. Alaska) (Holland)

This case involves a challenge to a gold dredging permit and mining plan on the Tuluksak River. Defendants are the Corps of Engineers and the BLM. The Corps of Engineers is the agency responsible for the issuance of dredge and fill permits (commonly known as 404 permits, see 33 U.S.C. § 1344) involving navigable waters. The Bureau of Land Management approves mining plans involving more than five acres of public land.

The plaintiff claims that BLM failed to comply with its statutory responsibilities under both NEPA and Section 810 of ANILCA. Specifically, they claim that the BLM erroneously concluded that it need not prepare a full environmental impact statement in conjunction with its permit authorizing Northland Gold to relocate a 1½ mile stretch of the Tuluksak River across BLM lands in order to dredge the main channel of the river. While BLM did an 810 analysis before approving the mining plans, plaintiffs argue that BLM erroneously found that the dredging activity and channel diversion would not significantly restrict subsistence uses within the meaning of Section 810.

On October 17, 1989, Judge Holland granted in part plaintiffs' motion for partial summary judgment on their NEPA and ANILCA claims. He found that BLM's conclusion not to prepare an EIS or to comply with the full ANILCA section 810 procedures was not reasonable, due to a failure to analyze fully the downstream impacts of the mining operation; but instead of ordering an EIS or compliance with Section 810, he remanded the matter to BLM to analyze those impacts and decide whether to prepare an EIS or comply with the Section 810 procedures. At the same time, he granted defendants' motion for

partial summary judgment as to the remaining counts, which seems to have in effect upheld BLM's permit on the merits. Plaintiffs moved to amend the judgment to vacate the decision in favor of defendants, which the Court denied on January 9, 1989. Plaintiffs have filed an appeal of the grant of summary judgment to defendants in the Ninth Circuit; defendants have moved to dismiss for lack of jurisdiction.

20. *Western Alaska Salmon Coalition v. Baldrige*, A85-536 Civ. (D. Alaska) (Kleinfeld)

This suit was brought by a coalition of Yupik commercial and subsistence salmon fishermen challenging the incidental take of salmon by Japanese and U.S. - Japanese joint venture ground fisheries operations in the American 200 mile Fisheries Conservation zone. Plaintiff argued that the Magnuson Fishery Conservation and Management Act, 16 U.S.C. §§ 1801 *et seq.*, prohibits salmon take by foreign or joint venture fishermen regardless of whether the take is incidental or targeted. Therefore, plaintiff argued there can be no ground fishery unless it can be done with no incidental take of salmon. The government takes the position that salmon may not be a targeted species and that any incidental take must be returned. However, the government believes that nothing in the Magnuson Act requires the prohibition of the ground fishery because of the incidental take. The government also takes the position that the American component of joint ventures should not be treated as a foreign fisher.

The government moved to dismiss the case on a number of procedural grounds, including estoppel, failure to exhaust administrative remedies, and more significantly, the 30-day statute of limitations in the Magnuson Act. Judge Kleinfeld heard oral arguments on the motions in 1987, and re-arguments on May 31, 1988. The case was dismissed following the re-arguments. The Court found that the Magnuson Act did not require prohibition of the ground fishery because of the incidental take of salmon. The decision was not appealed.

ENCLOSURE 6

Development and Implementation of
Tier II Hunting Regulations
1985

A Report to the Joint Boards of
Fisheries and Game
November 1985

Alaska Department of Fish and Game

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Introduction

At its June, 1985 emergency meeting the Game Board adopted regulations (5 AAC 92.054, 92.056, 92.058, 92.060) for implementing the "Tier II" provisions of the state's subsistence statute. The board requested a report on the effects of the Tier II regulations for this meeting. This report has three parts. The first reviews the factors the board considered in developing the Tier II regulation, and the associated application form. The second part describes the Department of Fish and Game's administration of this fall's Tier II hunts, and offers recommendations for improving the Tier II process if it is to be used in the future. The third part of the report describes the results of the Tier II system in allocation of permits.

Game Board's Development of the Tier II Regulation

Overview

During the June emergency Game Board meeting, a number of hunts were identified as being at "tier II." The board spent several days determining how to apply the three criteria in AS 16.05.251(a) and AS 16.05.255(b) and explored various options for interpreting and weighting the criteria. The board was assisted by a report prepared by the Department of Fish and Game which listed some possible factors which might correlate to the three criteria. Other factors emerged during the board discussion. In determining which factors to use, the board was hampered by lack of public testimony (because of the emergency nature of the meeting), and the short time until the fall hunting seasons.

In evaluating possible factors to employ, the board had to balance several competing values. Because of the short time period, and because of a desire not to unduly burden the public, the board felt that the application should be kept as simple as possible. On the other hand, the factors chosen needed to actually correlate to the criteria being measured, and the board could not make the regulations too simplistic without sacrificing that correlation. For example, the board initially considered income level as a fairly simple measure of alternative non-wild resources. However, because of complexities such as differences in cost of living, and the unknown variables such as an applicant's other financial assets and liabilities, the board determined that this seemingly straight-forward option was not useful.

A similar tension arose between having questions which were verifiable and questions which were meaningful in light of the three criteria. Location of residency, under the local residency criteria, was an objective and verifiable factor. This contrasts with an applicant's own assessment of whether his or her financial circumstances are adequate to purchase non-wild resources as a reasonable alternative to the taking of game. That correlates well with the alternative resources criteria -- as opposed to using income level, but it is not particularly verifiable.

The board also had to decide whether to craft one set of factors to

measure the three criteria which would be used on a statewide basis, or whether instead to have a number of different ways of measuring, tailored to the circumstances of each hunt. Partly because of the time constraints before the fall hunts, the board chose a statewide approach. The board eventually adopted regulations implementing "Tier II". 5 AAC 92.054, 056, 058, and 060; attachment A. An application for "tier II" hunts was developed, based on those regulations. Attachment B.

The following sections outline some of the options the Game Board considered in developing the tier II regulations, and summarize the factors ultimately chosen. The Board of Game recognized that these emergency regulations would not be the final word on the subject, and anticipated that if the statutory framework remains unchanged the regulations governing tier II hunts would be modified over time.

"Customary and direct dependence upon the resource
as the mainstay of one's livelihood."

This criterion appears to relate to the degree to which people have relied on specific fish stocks or game populations in particular geographic areas in the past, and how important this resource has been to their livelihood.

This criterion therefore seems to require at least two sets of standards, one to measure how consistently people have depended on the resource over time, and another to measure how important the resource has been relative to other aspects of their economic situation. Some of the possible indicators considered by the board included:

1. Percentage of diet from wild fish and game, as a general indication of dependence.
2. A history of hunting only in the area where the resource is in short supply as one indication that a person has customary and direct dependence on the resources of that area.
3. Size of the community the applicant resides in, since in larger communities there appears to be relatively less dependency on fish and wildlife than in smaller places.
4. Whether applicant has ever hunted or used the resource in the area.
5. Number of years the applicant has hunted or used the resource, a longer history of use indicating a greater degree of dependence.
6. Amounts of the resource ever harvested or used by the applicant or members of the applicant's household, larger amounts indicating a more consistent customary and direct dependence.

The board ultimately chose two measures, one more verifiable than the

other, for customary and direct dependence. 5 AAC 92.056(a); attachment A. Applicants were given one point for each year they had harvested an animal from the population, up to a maximum of 10 points. Further, applicants could receive up to 20 points for direct dependence on the noncommercial harvest of that population for the principle means of support (primary food source), with the applicant placing himself in the category of great, moderate, slight, or no dependence, and receiving 20, 15, 10, and 0 points respectively.

Because some game populations have only been hunted on a permit drawing system, the board determined that for those hunts no individual could be more dependent than any other individual, and awarded all applicants 30 points for this criterion for those hunts. 5 AAC 92.056(b); attachment A.

One of the problems the board discussed in connection with this criterion was that people could have been directly dependent upon a game population by virtue of harvest accomplished by another member of the individual's family. Thus, the dependent individual would never have actually harvested that population. It proved very difficult to craft an objective, verifiable factor to measure this criterion.

"Local Residency"

Distance greatly affects Alaskans' uses of fish and wildlife. People who live closest to a fish stock or game population are most likely to rely most consistently on that resource. With the criterion of "local residency," the legislature apparently intended that if a resource is in short supply in one area, then all other things being equal, people who live closest to it should have a preference over those who live further away.

The board considered several possible ways of identifying "local residency," including:

1. Distance of each applicant's residence from the resource in miles.
2. Travel costs for the applicant to harvest the resource.
3. Basing the definition on a series of zones defined by increasing distance from the resource; discussed as possibilities were the range of the resource, game management units, and the regions which the joint boards adopted as the basis of the six regional council jurisdictions.

One problem that the board encountered in dealing with the seemingly straight-forward local residency criterion involved how to measure the distance from the resource. Straight line distance was the simplest in some ways, but did not take into account mountain ranges and other physical barriers, nor distance along travel routes, such as rivers and highways. It would also have been very difficult to administer.

The board eventually decided to use a zone approach and to award up to 30 points depending on the applicant's residency zone. 5 AAC 92.058 (a); attachment A. The first zone consisted of the area in which the relevant hunt occurred; the second zone was outside of that area but within the game management unit or units containing the hunting area; the third zone was game management units adjacent to the unit or units containing the hunting area; the fourth zone was any other game management unit. 5 AAC 92.058(b); attachment A.

The board realized that these standardized measures might not always be appropriate, and built into the regulation an ability to modify the boundaries if the standard zones would either treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource. 5 AAC 92.058(c); attachment A. Since public testimony was not taken at the emergency Game Board meeting, the board realized it may not have identified all of the instances where boundary modifications might have been appropriate, but it was anticipated that corrections could be made as problems were discovered in the future.

"Availability of Alternative Resources"

The board discussed two different ways of viewing "availability of alternative resources." The first dealt with whether other fish or game resources are available to offset dependence on the resource in short supply. This could either mean other types of resources available in the same geographic area, or similar resources actually available in other geographic areas. These alternative resources are likely to be differentially available to people, due to differences in transportation, for example.

Timing can also influence availability of alternative resources. If the resource in short supply is customarily harvested in the spring, a resource which can be harvested only in the fall may or may not be an "available alternative."

A second way of viewing "alternative resources" discussed was to consider not just wild resources, but all alternative foods. From this perspective, people with access to fewer stores and foodstuffs, or who must pay higher prices for food, would have fewer alternative resources, and therefore should rank higher on this criterion.

Because of the great range of possible interpretations and approaches to this criterion, it was difficult for the board to develop a simple approach. The following possible indicators were considered:

1. A history of frequent use of fish and wildlife resources in other geographic areas as indicating a greater availability of alternative resources.

2. The use of aircraft to harvest resources as an indicator that a person has other alternatives available, since he or she could choose to hunt in many different areas of the state.
3. Living in a place with relatively few stores and substantially higher relative prices of food as an indicator of fewer alternatives.
4. Whether other fish and game resources are nearby, accessible, and useful as substitutes for the resource in short supply.
5. Whether the applicant's financial circumstances are adequate to allow purchase of alternative resources.

The board ultimately adopted two measures for this criterion. 5 AAC 92.060; attachment A. One was designed to correlate to the availability of fish and game resources and the other to measure the availability of non-wild resources. An applicant could receive up to 15 points depending on the availability of fish and game resources in the hunting area or other area reasonably accessible to the applicant. Additionally, 15 points were awarded to an applicant whose financial circumstance was not adequate to purchase non-wild resources as a reasonable alternative to the taking of game.

The first question is subjective to some extent. The board determined that availability of wild resources was in some degree dependent on an individual's circumstances, such as ownership of a car, an airplane, or a boat. The question on financial circumstances is necessarily subjective, since the board determined that other more objective and seemingly simple factors such as income level alone, or size of community, did not necessarily correlate to the availability of those non-wild resources to the applicant.

Summary

The Board of Game found it very difficult to develop standard measures to apply the three statutory criteria on a statewide basis. Time constraints and lack of public input made the board's task harder, but they were not the only factors. It was difficult to identify measures that would both correlate to fish and wildlife use and be verifiable. Any attempt to distinguish among individuals based on three criteria will involve the same fundamental problem of correlation and verification faced by the board at its June meeting.

Implementation

As occurs with all permit hunt processes adopted by the Board of Game, The Division of Game was responsible for implementing the Tier I and Tier II hunts adopted in the June 1985 emergency board meeting. Prior to the June meeting, the Board of Game held its annual spring (March-April) regulatory meeting and confirmed the 1985-86 hunting regulations, including the normal registration and permit drawing hunts. Immediately after the spring board meeting ended (April 8), Game Division staff produced the drawing hunt supplements and the registration hunt supplements, and began drafting the hunting and trapping regulation booklets. Both the drawing hunt supplements and registration hunt supplements were produced in record time and were made available to the public beginning April 16. The public was given 45 days (until May 31) to apply for fall drawing hunts, with results to be available on July 13 or shortly thereafter. There were 45,366 applicants for the 117 fall drawing hunts; \$275,670 in application fees were received.

The establishment of Tier I and Tier II hunts necessitated major changes in the administrative procedures of permit information and issuance. For the most part, Tier I and II hunts were developed from the previously mentioned permit drawing (lottery) hunts and registration hunts. A total of 54 Tier II hunts were authorized (See Attachment C).

Scheduling

New applications and newsprint supplements had to be quickly designed and produced for public distribution. In view of certain changes and limitations to permit hunts available to nonresidents, it was assumed that fewer hunters would participate in the Tier II permit hunt application process as did under the drawing system. In scheduling events and redirecting staff time to administer the Tier II hunt application process, we assumed a "worst case situation" and planned for receipt of up to 30,000 applications. Also, being aware that sheep seasons must start earlier than other hunts or essentially not at all, a separate schedule of events was designed for sheep which resulted in the creation and distribution of a separate supplement for this species.

For all other species, and based upon the "worst case" assumption, it was apparent that many of the seasons would need to have delayed opening dates. The following schedule of events were developed in late June:

Sheep

Hunt supplement ready for printing	July 5
News release on sheep hunts	July 8
5,000 supplements (4 pages each) ready for mailing	July 10
Mail/deliver to all ADF&G offices and selected vendors	July 20
Available to public - 9 days	July 29
Deadline for receipt by ADF&G	August 5
Additional time to score applications	August 6
Select winners	August 7-8
List of permit winners sent to Fairbanks, Tok, Glennallen, Delta, Palmer, Soldotna	August 8
Mail permits	August 9
Hunters receive permits	August 12-19

Season opens - August 20

All Other Species

Tier I and II newspaper and applications ready for printing	July 9
50,000 papers, 110,000 applications ready for mailing	July 15
Mail/deliver to all vendors and ADF&G offices	July 24
Available to public - 10 days	August 5
Deadline for receipt by ADF&G	August 12
Additional time to sort and process	August 17
Additional time to score	August 22
Select winners	August 26
Print permits and mail	Sept. 5
Hunters should receive permits no later than	Sept. 15

Information and Application Distribution

The original permit hunt supplements were withdrawn and two new supplements produced. One contained information on the "nonsubsistence" drawing hunts for the 1986 spring season. The second subsistence hunt supplement contained three types of hunts: (1) general registration hunts where any hunter including nonresidents could apply; (2) a subsistence registration hunt where only Alaskans (or some hunts where only individuals residing in specific geographic areas) could apply; and (3) a Tier II subsistence application where only those with highest application scores were given permits, or a drawing was held among those with the lowest tie-scores if only a limited number of permits were left.

The new hunt supplements and applications went out to the public on schedule. However, given the requirement of a short deadline for the application period, potential applicants had at best about two weeks to obtain the forms, complete them, and return them to the department or have them postmarked by August 5. Within the limited schedule, distribution of the applications to remote areas was particularly burdensome. In some cases, due to mail flight schedules and delays, applications were available to local residents only a few days before the deadline.

The hunting regulation booklet was significantly modified and reorganized into subsistence and general hunting sections. There were delays in printing and the books were not available at regional offices until September 3; 6-8 weeks later than normal and three weeks after some seasons had already begun.

Processing and Scoring

A total of only 9,382 applications were received. Of these, 595 were deemed invalid and rejected for the following reasons:

<u>Reason</u>	<u>Number</u>
Duplicate or 2 in household	80
Failure to certify that the application was the only one (or two for caribou) for the household	85
Domicile blank or invalid	71
Hunt number blank or invalid	125
Late application or cancelled hunt	5
Failure to submit application fee	195
Failure to certify that applicant was an Alaskan resident 12 years or older	15
Failure to sign application	<u>22</u>
	595

Since the number of applications was substantially less than originally anticipated, the overall processing time was shortened considerably and resulted in the Tier II permits being mailed out earlier than expected. This year it took an average of 4 minutes to score each application by hand. Computer processing (software was not available this year for Tier II applications) could reduce scoring time by 50 to 75% per application. If in future years, we received the same number of Tier II applications as was normally received on permit drawing hunts (approximately 50,000), an estimated 245 person days would be required to process the applications.

As noted above, applications were scored manually using a template score sheet. Scores were assigned in accordance with the point system established by the Board of Game. We have reviewed all applications and determined that we had a scoring error rate of 1.7%.

General Problems

Because of the emergency situation in which Tier II hunts were established and Tier II applications developed, instructions for answering the questionnaires did not precisely match the permit supplement (newspaper) instructions. This caused considerable confusion among staff and the public. For example, Question No. 9 in the permit supplement paper spoke to the degree of availability of alternative resources (including big game and salmon) which are at least as accessible as the Tier II animal for which one applied. It did not specify "in your usual hunt area" as did the application. Therefore, a person could have ignored alternative resources such as salmon and caribou that were readily accessible when applying for a Tok sheep permit, since he/she may have viewed "usual hunt area" as the actual Tok Management Area. If he/she viewed the "usual hunt area" as Zone 1, then all Zone 1 residents should have scored the same, as the same meat resources were available to all.

The application format and many of the questions confused many people and resulted in several thousand inquiries to staff via phone calls, letters, and visits to the various regional and area offices. Although scoring of the "point system" was explained in the regulation book, no explanation of terms in the application was provided to the public (except by staff) when they were completing their applications. The intent of not providing this information was to receive objective answers from the applicants, but the public soon recognized which answers would receive higher scores.

The short application period created significant problems for both the public and the department. Applicants at best had about two weeks to obtain the forms, complete them, and return them to the department or get them postmarked before August 5.

The process was particularly burdensome in remote areas. In some cases, due to mail flight schedules and delays, applications were available in communities for only a few days before the deadline.

Overall there was a tremendous negative reaction by the public to the establishment of Tier II hunts. Departmental staff, particularly Game Division staff in regional and area offices, were targets for verbal and written frustration and anger expressed by a confused and disenchanted hunting public. Hundreds of staff hours were spent trying to explain the reasons for the changes, how to participate in the new system, and generally trying to reestablish credibility with a public that was very unhappy.

Monetary costs to the department were high. About \$265,000 in application fees for the original 1985 permit hunts were refunded. We are currently determining extra costs expended in personnel and operating funds to administer the emergency Tier II hunts.

Recommendations

The permit system established under the emergency regulations worked in that Tier II hunts were held. However, there were numerous administrative difficulties that should be minimized or eliminated if the existing Tier II system is used in future years. It is also important that appropriate revisions be made so that: (1) confusion by the public can be minimized to the greatest extent possible; and (2) the system is not easily abused. Modifications to the present Tier II system would, of course, have to be made in a manner which results in correlation of the measured factors to the 3 statutory criteria. Specific recommendations are listed below.

Tier II Application

1. The current application form should have the following major revisions, if they can be made in a manner which results in correlation of the measured factors with the three statutory criteria:
 - a. all questions should be verifiable and quantified if at all possible (presently questions 8, 9, and 10 are not verifiable but carry large point values);
 - b. all ambiguous terms (e.g., "greatly dependent") should be defined on the form;
 - c. questions should be simplified and reduced to two possible answers (e.g., yes or no) where possible;
 - d. the applications should have a clause which states that the information provided on the application is not confidential and subject to public disclosure;
 - e. question 5 should be deleted (we received numerous erroneous application requests for hunts that did not exist);
 - f. if question 9 remains, the board should predetermine how available alternative resources are in the hunt area;
 - g. questions 11, 12, and 13 should be deleted and replaced with statements of fact (e.g., "to apply for a Tier II hunt, you must be at least 12 years old and a resident of Alaska"); and
 - h. the point value of each question should be shown on the form (this would save hundreds of staff hours answering calls regarding scores).
2. Standard procedures for scoring and rejecting applications for all hunts should be established and reviewed by the board prior to the application process and made available to the public.

3. Unlike lottery permits in the past, the Tier II permits are on the basis of household rather than an individual. The board needs to determine whether or not a permit can be transferred between members of the same household.
4. If at all possible, the application period should be a minimum of one month duration.
5. A more comprehensive public information program should be conducted regarding future Tier II hunts, schedules, and procedures.
6. As harvest returns become available, all hunts and corresponding numbers of permits should be analyzed and adjusted where necessary to meet management objectives.

The Allocation Effects of the Tier II System

The purpose of this section is to describe the performance of the Tier II system in allocating permits. The section has two parts. First, general characteristics of all Tier II hunts statewide are described, including number of hunts, location of hunts, number of applicants, number of winners, cut-off scores for winners, and other characteristics. Second, the allocation of permits among applicants is described by comparing the Tier II system in 1985 with the previous allocation systems in 1984 for particular hunts. Several questions are answered by these comparisons:

1. Who applied for the permits?
2. What were the criteria that mattered for obtaining permits?
3. What changes occurred in allocations compared to previous years?

General Characteristics of the Tier II System

Number of Tier II Hunts

There were 54 authorized Tier II hunts in 1985 (53 hunts were held) offering a total of 4,856 hunting permits for five types of game animals (see Table 1). Moose (26 hunts) and sheep (12 hunts) accounted for the largest number of hunts, while caribou (2,690 permits) and moose (1,611 permits) accounted for the largest number of permit opportunities.

Table 1
Tier II Hunts and Applicants

<u>Species</u>	<u>No. of Tier II Hunts</u>	<u>Available Permits</u>	<u>Valid Applicants</u>	<u>Permits Awarded</u>	<u>Award Rate</u>
Bison	4	107	826	107	13%
Caribou	5	2,690	3,528	2,504	71%
Moose	26	1,611	3,567	1,484	42%
Mt. Goat	6	36	93	36	39%
Sheep	<u>12</u>	<u>412</u>	<u>662</u>	<u>404</u>	61%
Totals	53	4,856	8,676	4,535	52%

Location of Tier II Hunts

Most Tier II hunts were located near the large population centers of Anchorage, the Matanuska Valley, Fairbanks, and Juneau in road-accessible areas (see Figure 1). The three GMUs surrounding Anchorage (GMUs 7, 14, and 15) accounted for 30 of the 53 hunts. The relatively easy access created by roads in these areas accounts for the high levels of participation and demand which resulted in these hunts being designated as Tier II. Only 10 hunts were designated in areas not connected by roads to large population centers.

As discussed below, the location of hunts accounts for the origin of most applicants. The great majority of applicants came from the large population centers.

Applicants and Winners

As shown in Table 1, there were 8,676 valid applicants for the 53 Tier II hunts, of which 4,535 (or 53%) were awarded permits. Award rates varied considerably between species and hunts (Table 1, Appendix Tables 1-6). The lowest award rate was for bison (13%) and the highest for caribou (71%). For certain caribou, moose, and sheep hunts, all applicants received permits (321 permits were not awarded because of undersubscription, see Appendix Tables 1 - 6).

Over 40 percent of permit winners came from the Anchorage-Matsu area due to the location of the hunts and the large population concentrations in these areas. As shown in Table 2, of all permits awarded, Anchorage residents won 24.3 percent and Matsu residents 20.4 percent.

Table 2
Permit Winners by Residency

<u>Residency</u>	<u>Bison</u>	<u>Caribou</u>	<u>Moose</u>	<u>Mt. Goat</u>	<u>Sheep</u>	<u>Total</u>
Anchorage Area	2 (1.9)	573 (22.9)	383 (25.7)	5 (13.9)	138 (34.2)	1,101 (24.3)
Mat-Su Area	0 (0.0)	503 (20.1)	395 (26.5)	1 (2.8)	27 (6.7)	926 (20.4)
Kenai Peninsula	1 (0.9)	171 (6.8)	58 (3.9)	8 (22.2)	4 (1.0)	242 (5.3)
Juneau Area	0 (0.0)	4 (0.2)	53 (3.6)	0 (0.0)	2 (0.5)	59 (1.3)
Fairbanks Area	1 (0.9)	128 (5.1)	20 (1.3)	0 (0.0)	75 (18.6)	224 (4.9)
Other	103 (96.3)	1,124 (44.9)	582 (39.0)	22 (61.1)	158 (39.1)	1,989 (43.8)
Total	107	2,503	1,491	36	404	4,539

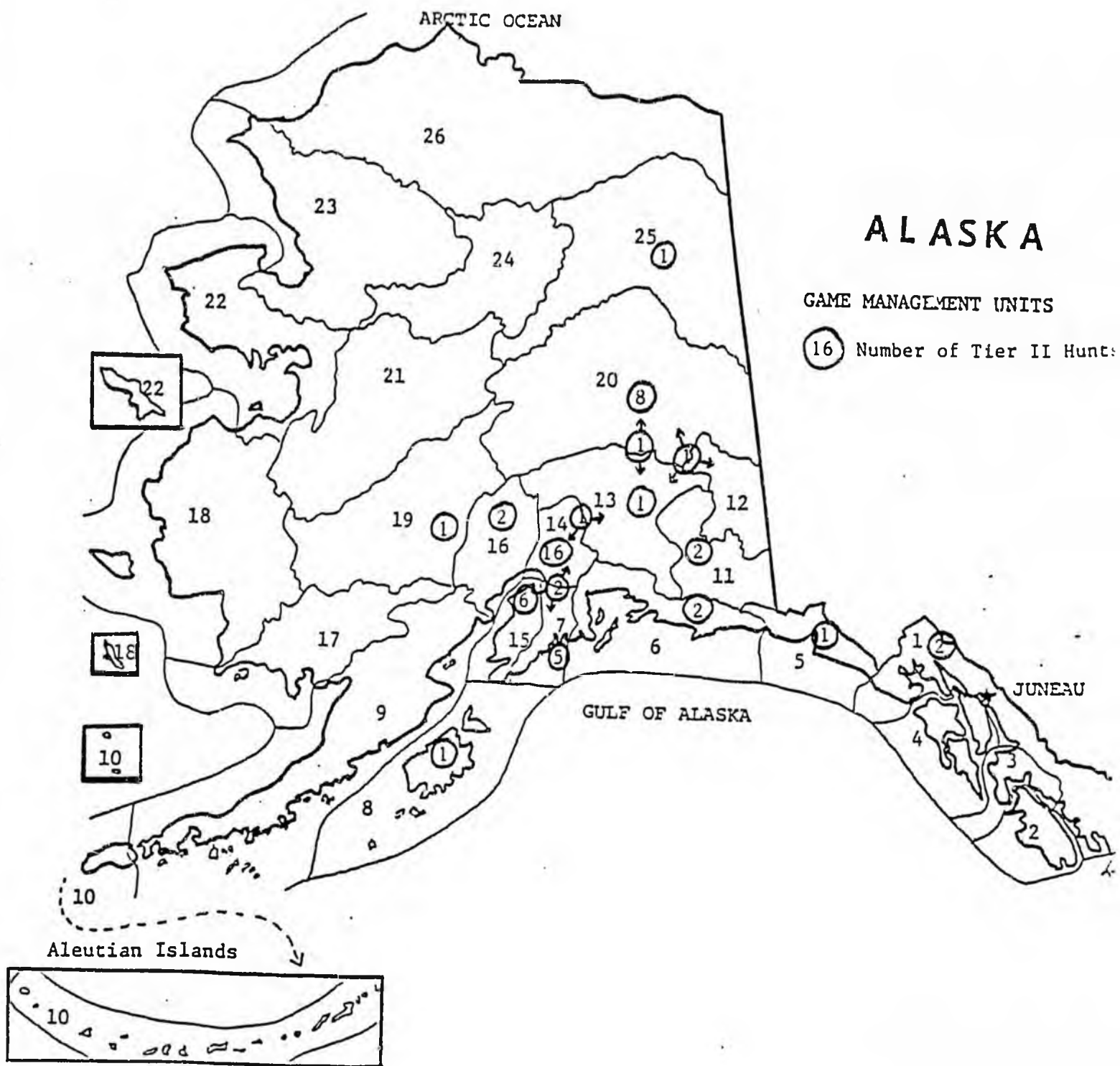


FIGURE 1. Locations of the 53 Tier II hunts in 1985. The greatest numbers occurred around population centers (Anchorage, Matanuska Valley, and Fairbanks).

Cut-off Scores of Winners

The cut-off scores between winners and non-winners varied considerably between hunts (Appendix: Table 2-6). The lowest winning score ranged from only 5 points (Yakutat Forelands Moose Hunt 0961, GMU 5A) up to 90 points, the highest possible (Tanana Bison Hunts 0403, 0404, GMU 20D). In general, the larger the number of applicants relative to available permits, the higher the cut-off score. It can be expected that cut-off scores will increase in the future if the applicant pool size increases.

Performance of the System in Allocating Permits

How did the Tier II system allocate hunting opportunities in comparison with previous years? The answer is that it depended upon the particular hunt. To illustrate the performance of the survey in allocating hunting opportunities, five cases are discussed below. They suggest three major conclusions:

1. Shifts occurred in the allocation of permits between hunters residing in different areas for particular hunts. For the hunts described below, the changes were not large in comparison with the previous year's allocation system.
2. Which questions were most important in determining who received permits varied between hunts. For some hunts, "residency" was the question most highly related to a hunter receiving a permit; for other hunts, "residency" made no difference, or was of secondary influence in comparison with other factors like "income" or "dependency." Similarly, for some hunts, the "income" question was most highly related to a hunter receiving a permit, while it was of no or secondary influence in other hunts. Whether a question mattered in receiving a permit was greatly affected by the size and location of the applicant pool relative to the number of permits and location of the hunt.
3. For hunts which previously were on random draw (see Case 5 below), the Tier II system changed the basis of allocation away from chance to a selection procedure based on the individual characteristics of a hunter in comparison with all other applicants. For hunts which previously were permit registration (see Case 1 below) or permit award based on residency and dependency criteria (see Case 2 below), the Tier II system increased the applicant pool but did not substantially alter the basis of allocation.

Case 1. Hunt 0985: GMU 20B Moose (Minto Flats)

Area

The 20B Minto Flats Management Area is located about 60 miles west of Fairbanks. The community of Minto (population 178 people) is located in the management area. Residents of Minto, Nenana, and Fairbanks have hunted in this area in the recent past.

Former Allocation System

Seasons and bag limits were substantially decreased in the Minto Management area beginning about 1976. In 1984-85, 30 registration permits were available for a 5-day fall moose hunt, and 50 permits for a 45-day January-February moose hunt, issued in Minto. An additional 20 fall permits were available, 10 issued in Anchorage and 10 in Fairbanks (see Table 3). The harvest quotas were seven fall bull moose and eight winter bull moose.

The Tier II Allocation System

The 1985 Tier II system provided for 60 permits issued to the top scoring applicants. In 1985, there were 68 applications received by mail within the deadline. Thus, almost all applicants were awarded permits (60 of 68; 88 percent successful). Of successful applicants, 31 were from Minto, 3 from Nenana, and 20 from Fairbanks-North Pole, with 6 winners from other places. Half the applicants had never killed a moose in this hunt previously; 31 percent had killed a moose 10 or more years.

Performance

The 1985 Tier II system resulted in a reallocation of permits (Table 3). Minto residents' permits decreased from 30 fall and 50 winter permits in 1984 to 31 permits in 1985. Fairbanks residents' permits increased from 10 fall permits to 20 permits. Nenana residents' permits decreased from 10 fall permits to 3 permits. Thus, a greater percentage of permits went to persons outside the hunt zone in 1985 than the previous year. The reallocation resulted primarily from the low number of hunter applicants from Minto and Nenana. There were numerous problems making applications available in the hunt zone: local vendors received permits only 2 days before the mailing deadline, and many residents were dispersed to fishcamps away from the community at that time. These problems resulted in the low application rate.

TABLE 3 MINTO FLATS MANAGEMENT AREA, PERMIT AND HARVEST SUMMARY, 1979-1985.¹

Regulatory Year	Number Permits Allocated			Number Issued			Harvest				
	Fbks.	Minto	Nenana	Fbks.	Minto	Nenana	Fbks.	Minto	Nenana	Non-Res.	Unknown
1979-80	--	--	--	113	65 ²	10	4	2	0		
1980-81	25	50	25	25	28	25	2	0	0		3
1981-82	25	50	25	25	34	25	5	2	0		
1982-83	25	50	25	25	41	25	4	2	0	1	
1983-84	25	50	25	25	50	25	8	7	1		
1984-85	fall	10	30	10	29	10	4	6	1		
	winter		50	10	30	10		1			
1985-85	60 Total			20	31	3	6 other				

¹ This information is derived from the Big Game Data Index Files, Alaska Department of Fish and Game, 1979-1985.

² 48 listed Minto as their residence.

Case 2. Hunt 515: GMU 13 Caribou (Nelchina herd)

Area

The range of the Nelchina and Mentasta caribou herds lies within the Copper Basin, a 29,520 square mile area about 180 miles east of Anchorage. The area is accessible by road to population centers in Anchorage, the Mat-Su Valley, and Fairbanks. There are about 3,310 people living in the "hunt zone" of the Copper Basin, in 1,057 households, and 22 communities or areas.

Former Allocation System

Hunting permits for the Nelchina caribou herd have been issued by random drawing since 1977. From 1981 through 1984, a separate subsistence permit drawing was held for qualified residents of a specified zone, most recently GMUs 11, 13, and a portion of GMU 12 along the Nabesna Road (see Table 4). Permits not awarded during the subsistence drawing were available by registration beginning December 1. As shown in Table 4, the number of applicants for subsistence permits rose steadily until demand exceeded supply by 218 in 1984.

The Tier II Allocation System

For the 1985 Tier II hunt, there were 2,718 valid applications, 711 (26 percent) from the Copper Basin and 2,007 (74 percent) from outside the basin. Of the 1,800 permits awarded, Copper Basin residents received 677 (38 percent) and non-basin residents received 1,123 (62 percent). Sixty-six percent of all applicants received permits. There were 34 unsuccessful Copper Basin applicants, including 20 from Glennallen and 9 from Copper Center. Fifty-one percent of the Anchorage applicants (351 of 690) and 55 percent of Eagle River applicants (92 of 168) received permits.

Performance

The 1985 Tier II system resulted in a reallocation of permits to residents of the Copper Basin in comparison with 1984. In 1984, 738 Copper Basin applicants received 500 permits, whereas in 1985 711 Copper Basin applicants received 677 permits. Non-basin applicants outside the hunt zone were the majority of winners in 1985 (1,123 permits) as in 1984, so the overall reallocation was small. The survey questions most highly correlated with receiving permits were household income and dependency. Only one percent of persons answering "no" to the income question received a permit; and only 12 percent answering "slight or no" dependence received a permit.

Table 4
Nelchina Caribou (GMU 13) Permit Applications

<u>Year</u>	<u>General Hunt</u>		<u>Subsistence Hunt</u>			<u>Total</u>	
	<u>Permits</u>	<u>Applicants</u>	<u>Permits</u>	<u>Applicants</u>	<u>Registration</u>	<u>Permits</u>	<u>Applicants</u>
1981-82	1,546	6,764	150	55	---	1,696	6,819
1982-83	1,300	8,877	450	233	217	1,750	9,110
1983-84	1,300	9,265	450	438	17	1,750	9,703
1984-85	1,400	11,798	500	718	0	1,900	12,516
1985-86 (Tier II)	---	---	1,800	2,718	---	1,800	2,718

Case 3. 913W: Unit 13 Moose (Copper Basin)

Area

The area of the Copper Basin is described in Case 2 above.

Former Allocation System

Most of GMU 13 has been open to general moose hunting, with a one-bull moose limit with an antler spread of 36 inches. To increase hunting opportunities for subsistence use, since 1983 an additional 100 subsistence permits were available by drawing for GMU residents. In 1983, 230 people applied; in 1984, 372 people applied.

Tier II Allocation System

In 1985, the Tier II system provided 200 antlerless moose permits available to all Alaskan residents. There were 506 valid applications. Of these, 391 (77 percent) were GMU 13 residents. Of the 200 permits awarded in 1985, 182 (91 percent) went to Copper Basin residents.

Performance

The Tier II system resulted in an extra 100 permits being made available for antlerless moose in 1985 over 1984 due to an increase in the allowed harvest. Almost all these additional permits were allocated to hunt zone residents of the Copper Basin by the scoring system, primarily because of the residency question. Because there were more hunt zone applicants than available permits, the questions on income and dependency also were important in determining permit winners.

Case 4. Hunt 510: GMU 11 Caribou (Mentasta Herd)

Area

The Mentasta Caribou herd ranges in the Mentasta and Wrangell Mountains in the eastern part of the Copper River Basin. Unlike the Nelchina Caribou Herd (Case 2), the Mentasta herd is not easily accessible by road from population centers.

Former Allocation System

Hunting permits for the Mentasta caribou herd have been issued by random draw since 1977. Until 1985, there were no subsistence permits issued. As shown in Table 5, the number of applicants has grown since 1977, leveling off in 1983 and 1984.

Tier II Allocation System

The 1985 Tier II hunt offered 350 permits to the top scoring applicants. However, only 170 people applied, leaving 180 permits unissued. Consequently, all applicants received permits. Fifty-five applicants (32%) were from the Copper Basin (Chitina 2; Chistochina 1; Copper Center 10; Gakona 7; Glennallen 14; Nabesna 4; Tazlina 1; Slana 15); while 115 were from outside the basin. Thirty-five applicants were from Anchorage, 36 from Valdez, and 3 from Fairbanks.

Performance

That more people did not apply for this hunt can be explained in part as a response to the announced change in season to September 21- September 30. August 10 - September 30 had been the season in 1984. As evidenced by advisory committee comments, many people felt that caribou taken at the end of September would be in rut and the meat would not be useable. Also, the later season meant that due to herd movements, the caribou would not be in accessible locations. In contrast, the Nelchina caribou GMU 13 hunt is open January - March. The season for Unit 11 caribou was finally altered to September 10 - 30, but this was well after the deadline for submitting permit applications.

Table 5
Number of Applicants, Mentasta Caribou Herd

<u>Year</u>	<u>Applicants</u>	<u>Permits</u>	<u>Residency of Winners</u>	
			<u>Copper Basin</u>	<u>Non-Copper Basin</u>
1977	277	150	---	---
1978	363	350	---	---
1979	408	350	---	---
1980	421	350	---	---
1981	619	350	148 (43%)	202 (57%)
1982	732	350	128 (37%)	220 (63%)
1983	757	350	---	---
1984	731	350	---	---
1985 (Tier II)	170	350	55 (32%)	115 (68%)

Case 5. Hunt 919: Unit 14A (East) Antlerless Moose

Area

This hunt takes place in the eastern Matanuska Valley. The area is road-accessible to large population centers. In 1984, there were 29,836 residents of the Mat-Su Valley area.

Former Allocation System

In 1984, the antlerless moose hunt was based on a random draw system. Anyone was permitted to apply for a drawing permit to take cow moose. There was also a bull moose season in 14A (East) with no permit requirement.

Tier II Allocation System

The Tier II system offered 200 antlerless moose permits in 14A (East). There were 658 applications for the 200 Tier II permits. Of these, 495 applicants (75 percent) lived in the hunt area, GMU 14A, mostly Palmer (300) and Wasilla (151); 163 applicants were from outside GMU 14A, mostly Anchorage (102) and Eagle River (37). Of the 200 permits issued, 194 (97 percent) went to Unit 14A residents. Anchorage residents received 3 permits, Eagle River 2, and Peters Creek 1. Of residents of the hunt area, 320 applicants (61 percent) did not receive a permit. All applicant scores of 71 or better received permits. Ten of 46 applicants with a score of 70 were selected randomly and issued permits.

Performance

The Tier II system appears to have resulted in a different way to allocate a relatively small number of hunting permits among a large number of potential hunters. Instead of random draw, residency of individual applicants was the more important first-cut criteria. Besides place of residence, the question that appears to have had the most effect on applicant success was sufficiency of income. Of the 200 permit winners, 194 responded "no" to whether they had adequate income to purchase substitutes for moose. Of the 458 unsuccessful applicants, 84 (18 percent) reported insufficient income.

Conclusions

As shown by the five cases discussed above, the performance of the Tier II system varied considerably between hunts. Changes did occur in the allocation of permits between hunters residing in different areas for certain hunts. In some instances, relatively more permits were allocated to hunters outside the hunt zone (the Minto Flats moose case); in other instances relatively more permits were allocated to persons in the hunt zone (the Nelchina caribou case); and in other instances some permits were left unallocated (the Mentasta caribou case). Overall, these changes were not large in magnitude in comparison with the 1984 hunts.

A second conclusion is that the relative importance of particular survey questions in awarding permits varied between hunts. For undersubscribed hunts, point scores were irrelevant (the Mentasta caribou case). In hunts with a large number of applicants with equivalent residency scores (the Nelchina caribou, Copper Basin moose, and 14A (East) moose), survey questions other than residency became important, such as income and dependency.

A third conclusion is that for previous random draw hunts (Cases 2, 3, 4, 5), the Tier II system changed the basis of allocation away from chance to selection based on individual characteristics of the applicant in comparison with other applicants. For hunts previously under permit registration (Case 1) or permit award based on residency and dependency criteria (Cases 2, 3), the Tier II system tended to increase the applicant pool with persons residing away from the registration and hunt zones; however, the Tier II system did not substantially alter the basis of allocation.

Finally, it can be expected that the performance of the survey will change in subsequent years if a Tier II system is continued. In particular, changes in the size and location of the applicant pool relative to the hunt can be expected to affect future permit allocations.

STATEWIDE INFORMATION

5 AAC 92.054. PRIORITY FOR SUBSISTENCE HUNTING. (a) When the board has eliminated nonsubsistence uses of game, and the board finds that it must further restrict the taking of game to assure that the game population is maintained and managed on a sustained yield basis, or to assure the continuation of subsistence uses of a game population, tier II hunting permits will be allocated to people who receive the highest number of points according to the following criteria:

(1) customary and direct dependence upon the game resource as the mainstay of the person's livelihood, as indicated by past participation and the extent that the person depends on that game resource;

(2) local residency, as indicated by the location of the person's domicile and distance from there to the hunting area; and

(3) availability of alternative resources, as indicated by the presence of other fish and game resources authorized and available for harvest in the hunting area, or in another area reasonably accessible to the individual, and by the person's financial circumstance.

(b) The board will establish a point system for ranking a tier II hunting permit applicant based on each criterion set out in (a) of this section. A tier II hunting permit will be issued to each highest ranking applicant until all permits authorized for each hunt have been issued. If, at the cutoff point, the number of applicants with equal scores exceeds the remaining permits available, permittees shall be selected by random drawing among those applicants.

(c) Each applicant for a tier II hunting permit must be a resident at least 12 years old.

(d) Only one person in a household may apply for each tier II hunt, except that two people in a household may apply for each tier II caribou hunt.

5 AAC 92.056. POINT SYSTEM FOR CUSTOMARY AND DIRECT DEPENDENCE. (a) Except as provided in (b) of this section, a maximum of 30 points will be given an applicant for past participation in a hunt and degree of dependence based on the following schedule:

(1) 1 point for each year the applicant harvested an animal from the population; a maximum of 10 points will be given;

(2) up to 20 points for degree of direct dependence on the noncommercial harvest of the population for the principal means of support (primary food source) of the applicant:

- (A) great dependence, 20 points;
- (B) moderate dependence, 15 points;
- (C) slight dependence, 10 points;
- (D) no dependence, 0 points.

(b) For a hunt on a game population that has only been hunted under a permit drawing system, each applicant will be given 30 points for customary and direct dependence on the resource as the mainstay of the applicant's livelihood, because the board finds that as a consequence of the random nature of the distribution of hunting opportunity under the system no person has been able to develop customary and direct dependence on that game population that is different in degree from any other person.

STATEWIDE INFORMATION

5 AAC 92.058. POINT SYSTEM FOR LOCAL RESIDENCY. (a) A maximum of 30 points will be given based on the location of an applicant's domicile according to the following schedule:

- (1) residency zone 1: 30 points;
- (2) residency zone 2: 20 points;
- (3) residency zone 3: 10 points;
- (4) residency zone 4: 0 points.

(b) Except as provided in (c) of this section:

(1) residency zone 1 means the hunting area;

(2) residency zone 2 means outside the hunting area, but within the game management unit or units containing the hunting area;

(3) residency zone 3 means in game management units adjacent to the game management unit or units containing the hunting area;

(4) residency zone 4 means in another game management unit.

(c) If the board determines that the zones in (b) would treat a specific concentration of similarly located individuals differently, or would be inappropriate due to the range and distribution of the resource, the board will, by regulation, modify the boundaries of the zones.

5 AAC 92.060. POINT SYSTEM FOR AVAILABILITY OF ALTERNATIVE RESOURCES. A maximum of 30 points will be given to an applicant for availability of alternative resources based on the following schedule:

(1) availability of fish and game resources in the hunting area, or other area reasonably accessible to the applicant:

- (A) greatly available: 0 points;
- (B) moderately available: 5 points;
- (C) slightly available: 10 points;
- (D) not available: 15 points;

(2) 15 points will be given if the applicant's financial circumstance is not adequate to purchase non-wild resources as a reasonable alternative to taking the game.

1985 TIER II HUNTS

Species	Hunt No.	Permits Avail.	Hunt Description
Bison	406	12	Either sex, Chitina Herd
Bison	451	40	Either sex, Farewell Herd
Bison	403	15	Bulls, Delta area
Bison	404	40	Cows, Delta area
Caribou	501	200	Either sex, Kenai Mountains
Caribou	510	350	Either sex, Wrangell Mountains
Caribou	515	1800	Either sex, early season, Nelchina Antlerless, late season, Nelchina
Caribou	530	140	Bulls, Macomb Plateau
Caribou	570	200	Either sex, Delta Herd
Mt. Goat	831	2	Resurrection Creek, west, Kenai Peninsula
Mt. Goat	834	4	Mills Creek, Kenai Peninsula
Mt. Goat	835	4	Placer River, west, Kenai Peninsula

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Species	Hunt No.	Permits Avail.	Hunt Description
Mt. Goat	843	2	Andy Simons Mountain, Kenai Peninsula
Mt. Goat	855	4	Twin Lakes, Kenai Peninsula
Mt. Goat	872	20	Crown Mountain, Kodiak

Moose	901	15	Either sex, Berners Bay
Moose	959	45	Bulls, Upper Lynn Canal
Moose	961	200	Bulls, Yakutat Forelands
Moose	967	20	Bulls, west Copper River Delta
Moose	968	20	Cows, west Copper River Delta
Moose	910	20	Antlerless, Portage area
Moose	911	40	Antlered, Portage area
Moose	913W	200	Bulls, Nelchina except part of 13(A)
Moose	919	200	Antlerless, Matanuska Valley, east
Moose	920	200	Antlerless, Matanuska Valley, west
Moose	923	up to 50	Late winter, Fort Richardson
Moose	925	15	Antlerless, Knik River/Hunter Creek

Species	Hunt No.	Permits Avail.	Hunt Description
Moose	927	20	Antlerless, Ship Creek
Moose	928	15	Antlerless, Peters Creek
Moose	974	75	Either sex with bulls having spike/fork, Eagle River archery
Moose	975	125	Either sex with bulls having spike/fork, Eklutna archery
Moose	978	up to 30	Either sex with bulls having spike/fork, Anchorage archery, late winter
Moose	929	Closed	Antlerless, 15(A) part
Moose	931	14	50" antlered, 15(B) south of Skilak Lake
Moose	933	6	50" antlered, 15(B) Funny and Killey Rivers
Moose	935	12	50" antlered, 15(B) Timberline Lake
Moose	937	8	50" antlered, 15(B) southwest of Funny River
Moose	939	10	50" antlered, 15(B) Indian Creek
Moose	981	up to 75	Either sex, 16(B) north, late winter
Moose	982	up to 75	Either sex, 16(B) south, late winter
Moose	985	60	Bulls, Minto Flats, split-early/late seasons
Moose	994	60	Bulls, portion of 25(D)

Species	Hunt No.	Permits Avail.	Hunt Description
Dall Sheep	1102	120	Full curl ram, Tok area
Dall Sheep	1103	150	Full curl ram, Delta area
Dall Sheep	1110	10	Ewe, 14(A) Matanuska Valley
Dall Sheep	1130	26	7/8 curl ram, 14(C) Eklutna area, early hunt
Dall Sheep	1131	26	7/8 curl ram, 14(C) Eklutna area, late hunt
Dall Sheep	1132	18	7/8 curl ram, 14(C) north side of Eagle River and Peters Creek, early hunt
Dall Sheep	1133	18	7/8 curl ram, 14(C) north side of Eagle River and Peters Creek, late hunt
Dall Sheep	1134	16	7/8 curl ram, 14(C) south side of Eagle River, early hunt
Dall Sheep	1135	16	7/8 curl ram, 14(C) south side of Eagle River, late hunt
Dall Sheep	1106	4	Full curl ram, 20(D) & (E), Mt. Harper area
Dall Sheep	1107	4	Full curl ram, 20(E), Seventy-mile River area
Dall Sheep	1108	4	Full curl ram, 20(E), Upper Charley River area

APPENDIX

APPENDIX TABLE 1

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0403	15	15	90	85	29	6	0	248	11	259
0404	40	40	90	85	40	31	0	417	20	437
0406	12	12	70	65	6	4	0	45	4	49
0451	40	40	55	50	9	5	0	116	12	128
0501	200	200	31	30	12	4	0	239	5	244
0510	350	170	10				104	171	9	180
0515	1800	1800	47	46	58	29	0	2710	92	2810
0530	140	134	15				6	134	8	142
0570	200	200	41				0	266	14	280
0831	2	2	75				0	10	0	10
0834	4	4	60	55	4	3	0	14	0	14
0835	4	4	30				0	6	0	6
0843	2	2	65				0	19	0	19
0855	4	4	57				0	14	1	15
0872	20	20	60	55	10	9	0	30	2	32
0901	15	15	70				0	158	12	170
0910	20	20	66				0	87	4	91
0911	40	40	66	65	21	10	0	209	10	219
0913W	200	200	71	70	57	11	0	506	16	522
0919	200	200	71	70	46	10	0	658	26	684
0920	200	200	71	70	56	22	0	637	29	666
0923	50	50	80	75	24	23	0	110	6	116
0925	15	15	66				0	35	3	38
0927	20	20	60				0	42	2	44
0928	15	15	80	75	4	2	0	51	2	53

APPENDIX TABLE 1 (Cont.)

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0931	14	14	66				0	61	2	63
0933	6	6	61				0	21	5	26
0935	12	12	61	60	5	3	0	54	6	60
0937	8	8	70	65	11	2	0	42	3	45
0939	10	10	66				0	65	5	70
0959	45	45	66	65	4	1	0	69	12	81
0961	200	173	5				27	173	25	198
0967	20	20	71	70	5	1	0	74	7	81
0968	21	21	75				0	95	11	106
0974	75	59	10				16	59	3	62
0975	125	92	25				33	92	7	99
0978	30	30	50	50	8	ALTS	0	41	3	44
0981	75	56	10				12	57	5	62
0982	75	43	20				34	43	5	48
0985	60	60	42	40	2	1	0	68	3	71
0994	60	60	30				0	60	26	86
1102	120	120	36	35	12	2	0	155	9	164
1103	150	150	ALL				0	150	5	155
1106	4	3	ALL				1	3	0	3
1107	4	0					4	0	0	0
1108	4	1	ALL				3	1	0	1
1110	10	10	76	75	3	1	0	43	1	44
1130	26	26	66				0	92	1	93
1131	26	26	46	45	6	3	0	35	0	35
1132	18	18	56	55	10	3	0	53	1	54

APPENDIX TABLE 1 (Cont.)

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
1133	18	18	56	55	8	2	0	37	2	39
1134	16	16	75				0	59	0	59
1135	16	16	56				0	34	2	36
8888	0	0					0	0	158	158
*** Total ***	4856	4535					320	8676	595	9271

APPENDIX TABLE 2

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B I S O N

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0403	15	15	90	85	29	6	0	248	11	259
0404	43	40	90	85	40	31	0	417	20	437
0406	12	12	70	65	6	4	0	45	4	49
0451	40	40	55	50	9	5	0	116	12	128
*** Total ***	107	107					0	826	47	873

APPENDIX TABLE 3

C A R I B O U

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0501	200	200	31	30	12	4	0	239	5	244
0510	350	170	10				184	171	9	180
0515	1800	1800	47	46	58	29	0	2718	92	2810
0530	140	134	15				6	134	8	142
0570	200	200	41				0	266	14	280
*** Total ***	2690	2504					190	3528	128	3656

APPENDIX TABLE 4

H T. G O A T

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	TIRU SCORE	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0831	2	2	75				0	10	0	10
0834	4	4	60	55	4	3	0	14	0	14
0835	4	4	30				0	6	0	6
0843	2	2	65				0	19	0	19
0855	4	4	57				0	14	1	15
0872	20	20	60	55	10	9	0	30	2	32
*** Total ***	36	36					0	93	3	96

APPENDIX TABLE 5
M O O S E

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0901	15	15	70				0	130	12	170
0910	20	20	66				0	87	4	91
0911	40	40	66	65	21	10	0	209	10	219
0913W	200	200	71	70	57	11	0	506	16	522
0919	200	200	71	70	46	10	0	658	26	684
0920	200	200	71	70	56	22	0	637	29	666
0923	50	50	80	75	24	23	0	110	6	116
0925	15	15	66				0	35	3	38
0927	20	20	60				0	42	2	44
0928	15	15	80	75	4	2	0	51	2	53
0931	14	14	66				0	61	2	63
0933	6	6	61				0	21	5	26
0935	12	12	61	60	5	3	0	54	6	60
0937	8	8	70	65	11	2	0	42	3	45
0939	10	10	66				0	65	5	70
0959	45	45	66	6	4	1	0	69	12	81
0961	200	173	5				27	173	25	198
0967	20	20	71	70	5	1	0	74	7	81
0968	21	21	75				0	95	11	106
0974	75	59	10				16	59	3	62
0975	125	92	25				33	92	7	99
0978	30	30	50	50	8	ALTS	0	41	3	44
0981	75	56	10				12	57	5	62
0982	75	43	20				34	43	5	48
0985	60	60	42	40	2	1	0	68	3	71

APPENDIX TABLE 5 (Cont.)

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M O O S E

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	TIRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
0994	60	60	30				0	60	26	86
*** Total ***	1611	1484					122	3567	238	3805

APPENDIX TABLE 6

S H E E P

TIER II PERMIT HUNTS

HUNT	PERMITS AVAILABLE	PERMITS AWARDED	THRU SCORE:	RANDOM DRAW SCORE	RANDOM NUMBERS GENERATED	RANDOM WINNERS	PERMITS UNISSUED	VALID APPLICANTS	REJECTS	TOTAL APPLICANTS
1102	120	120	36	35	12	2	0	155	9	164
1103	150	150	ALL				0	150	5	155
1106	4	3	ALL				1	3	0	3
1107	4	0					4	0	0	0
1108	4	1	ALL				3	1	0	1
1110	10	10	76	75	3	1	0	43	1	44
1130	26	26	66				0	92	1	93
1131	26	26	46	45	6	3	0	35	0	35
1132	18	18	56	55	10	3	0	53	1	54
1133	18	18	56	55	8	2	0	37	2	39
1134	16	16	75				0	59	0	59
1135	16	16	56				0	34	2	36
*** Total ***	412	404					8	662	21	683

Alaska State Legislature

Senate Resources Committee

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Senator Rick Hallford
Senator Athiss Sturgulewski
Senator Fred Zharoff



P.O. Box V
Juneau, Alaska 99811
(907) 465-4907

March 15, 1990

The Honorable Don Collinsworth
Commissioner of Fish and Game
P.O. Box 3-2000
Juneau, AK 99802

Dear Commissioner Collinsworth:

As you know, the Senate Resources Committee is currently exploring possible solutions to the subsistence issue. I have held several hearings in order to brief members on what options the administration has pursued and to provide an historical perspective in regard to subsistence at both the state and federal levels.

In order to more fully understand the issue, it would be useful if you could illustrate for the committee the current level of subsistence use and what you envision as potential conflicts between subsistence use and sport or commercial use. In that regard it would be helpful if you could provide an enumeration of each subsistence hunt or fishery in the state, and the rationale the board used to determine the need for the subsistence use. Has the subsistence priority has ever been invoked, and if so, when? For example, are resident sport hunters or other classes of hunters precluded from some hunts as a result of the state's subsistence law? To what extent do you anticipate the enlarged class of subsistence users under McDowell to impact hunting and fishing? What specific restrictions, if any, apply to subsistence users under methods and means? For example, are subsistence users restricted from using aircraft or motorized vehicles while subsistence hunting or fishing?

I would like your suggestions for a definition of "rural" that, if placed in state statute or federal law, would resolve some or all of the legal issues in reference to litigation such as the Kenaitze case, the Sitka suit, and McDowell's continuation of his suit challenging federal constitutionality of the subsistence law.

The administration has provided the Senate Resources Committee with a list of nine subsistence options. It would be helpful to us to have a list of actions that would be necessary to carry out each option.

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I believe that in order to find solutions to the subsistence issue it is necessary for the legislature to understand the level of subsistence, actions that the board has taken to date, and what potential problems you anticipate occurring. I appreciate your attention to this matter.

Sincerely,

Bettye Fahrenkamp
Bettye Fahrenkamp
Chairman

BF:res/np

Cheri C. Jacobus
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Attorneys for the Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT FAIRBANKS

SAM E. McDOWELL; ISAAC WALTON LEAGUE;)
JOHN ALSWORTH; MARY ALSWORTH;)
KEN ALSWORTH, JR.; MARGARET CLUM;)
ALASKA WATERFOWL ASSOCIATION;)
ALASKA SPORTFISHING ASSOCIATION, INC.;)
ALASKA FISH & WILDLIFE CONSERVATION)
FUND; ALASKA FISH AND WILDLIFE)
FEDERATION AND OUTDOOR COUNCIL, INC.;)
KEN OWSICHEK; DALE BONDURANT;)
WARREN OLSON; HAROLD EASTWOOD;)
MATANUSKA VALLEY SPORTSMEN;)
MUSKEG MUZZLELOADERS CLUB;)
ALASKA BOWHUNTERS; JIM REARDON;)
RUSS REDICK; LOREN CROXTON;)
LOUIE BRUNNER; ALASKA PROFESSIONAL)
SPORTSMENS ASSOCIATION;)
STERLING EIDE; ALASKA GUN COLLECTORS)
CLUB,)

Plaintiffs,)

vs.)

UNITED STATES OF AMERICA; UNITED STATES)
DEPARTMENT OF THE INTERIOR; MANUEL J.)
LUJAN JR., IN HIS OFFICIAL CAPACITY AS)
SECRETARY OF THE INTERIOR,)

Defendants.)

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

Case No. 90-F-____ Civil

LAW OFFICES OF
ROSS, GINGRAS, BAILEY & MINER
A PROFESSIONAL CORPORATION
1007 W. THIRD AVENUE, SUITE 204
ANCHORAGE, ALASKA 99501
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Plaintiffs, SAM E. McDOWELL, ISAAC WALTON LEAGUE, JOHN ALSWORTH, MARY ALSWORTH, KEN ALSWORTH, JR., MARGARET CLUM, ALASKA WATERFOWL ASSOCIATION, ALASKA SPORTFISHING ASSOCIATION, INC., ALASKA FISH AND WILDLIFE CONSERVATION FUND, ALASKA FISH AND WILDLIFE FEDERATION AND OUTDOOR COUNCIL, INC., KEN OWSICHEK, DALE BONDURANT, WARREN OLSON, HAROLD EASTWOOD, MATANUSKA VALLEY SPORTSMEN, MUSKEG MUZZLELOADERS CLUB, ALASKA BOWHUNTERS, JIM REARDON, RUSS REDICK, LOREN CROXTON, LOUIS BRUNNER, ALASKA PROFESSIONAL SPORTSMENS ASSOCIATION, STERLING EIDE and ALASKA GUN COLLECTORS CLUB, by and through their attorney of record, Cheri C. Jacobus, of Ross, Gingras, Bailey & Miner, a professional corporation, complain against the Defendants, UNITED STATES OF AMERICA, UNITED STATES DEPARTMENT OF THE INTERIOR, and MANUEL J. LUJAN JR., in his official capacity as Secretary of the Interior as follows:

JURISDICTION

1. This case presents a claim arising under the Constitution, laws and treaties of the United States, of which this court has jurisdiction of this case under 28 U.S.C. 1331 (General Federal Question Jurisdiction).

DESCRIPTION OF THE PLAINTIFFS

2. Plaintiff SAM E. McDOWELL has resided in Alaska since 1948. He has had a lifelong commitment to hunting and fishing. It is not a sport for him, and he and his family have always lived off of the fish and game of the State of Alaska. It

is, in fact, a way of life for them. Sam McDowell lives in Anchorage, and has been denied the opportunity to participate in subsistence on Federal lands as a direct result of the passage of Alaska National Interest Lands Conservation Act, Public Law 96-487, 94 Stat. 2376 (hereinafter referred to as ANILCA).

3. The Plaintiff ISAAC WALTON LEAGUE is the oldest conservation organization in America, founded in 1922, with over 55,000 members nationwide, including members in rural Alaska. It is dedicated to the preservation, protection and management of fish, wildlife, and renewable natural resources in America, as well as to the protection and enhancement of America's waters, air, woods and environment. It and its members are dedicated to the conservation of all renewable resources.

4. Plaintiff JOHN ALSWORTH is an Aleut Indian, and a member of Bristol Bay Native Corporation, who was born in Anchorage, Alaska, and has lived in Alaska for all of his 38 years. He was raised at Lake Clark and has participated in subsistence harvesting all of his life. Plaintiff Alsworth has a cultural need to pass on the subsistence traditions of his family and as a Native American. He presently resides in Anchorage, Alaska.

5. Plaintiff MARY ALSWORTH is an Aleut Indian, and a member of Bristol Bay Native Corporation, who was born at Pilot Point in 1924. Plaintiff MARY ALSWORTH moved to Lake Clark in May 1942 and resided there until September 1977. Throughout all of

the years that she lived in Alaska, she participated in subsistence harvesting, and it is an important part of her cultural heritage. She owns property in Port Alsworth and the Lake Clark area. She is now residing in Kauai, Hawaii, and can no longer participate in subsistence harvesting in Alaska even on her own property. ANILCA penalized her for moving.

6. Plaintiff KEN ALSWORTH, JR. was born at Lake Clark in 1969 and is an Aleut Indian who is a member of the Bristol Bay Native Corporation. He lived in Lake Clark until 1985, and has since that time resided in Anchorage, Alaska. Like other Native Americans, subsistence harvesting is an important part of his cultural heritage and he has now found that he can no longer participate in subsistence harvesting when he returns to his birth place to visit with his relatives. He must stand idly by and watch members of his family continue this important cultural heritage if he wants to comply with the law.

7. Plaintiff MARGARET CLUM, is an Aleut Native who has lived in Alaska all of her 42 years, and is a member of Cook Inlet Native Association. Plaintiff CLUM has a cultural need to pass on the subsistence traditions in her family and as a Native American. Margaret CLUM owns nearly 80 acres of Native allotment within the Lake Clark National Park and Preserve and although she has participated in subsistence harvesting for nearly all of her life, because she lives in Anchorage, Alaska, she has been denied the right to participate in subsistence harvest even on her own Native

allotment land.

8. Plaintiff ALASKA WATERFOWL ASSOCIATION is a voluntary non-profit organization with approximately 200 regular members, including some rural members, dedicated to the conservation of waterfowl and primarily concerned with waterfowl management and waterfowl habitat. It is the seventh largest waterfowl association in the United States.

9. Plaintiff ALASKA SPORT FISHING ASSOCIATION, INC. has over 1,800 members made up of sport fishermen throughout Alaska, including rural Alaska, and internationally. The purpose of the Alaska Sport Fishing Association is to promote and support fishing in the State and oversee the governing bodies which make up the rules and regulations and, in particular, to ensure a sustained yield of the resources for the benefit of all users.

10. Plaintiff, ALASKA FISH AND WILDLIFE CONSERVATION FUND and its members, including rural Alaskans, are dedicated to the perpetuation of a renewable natural resource base that allows the sustained activities of its member groups and individuals. It is dedicated to the conservation of natural renewable resources of the State of Alaska.

11. Plaintiff ALASKA FISH AND WILDLIFE FEDERATION AND OUTDOOR COUNCIL, INC. is a federation of Alaskan organizations and individuals who have an interest in outdoor activities and resources and believe in conservation, (i.e. the wise use of Alaska's natural resources). Their individual members include

individuals living in rural Alaska. The common bond of all council members is the desire to perpetuate the natural resource base that allows the sustained activities of its member groups. It places particular emphasis on the maintenance of Alaska's fish and wildlife resources and their uses, and continued access to public lands. It is committed to the maintenance of Alaska's fish and wildlife resources, preservation of critical wildlife habitat, assurance of access to, and use of public resources, perpetuation of the public's hunting, fishing, trapping and shooting rights, equality among public resource users, the support of professional, State management of Alaska's wildlife and other natural resources, dedication to continue public education on renewable resource management, and participation in regulatory, legislative, administrative, and judicial policy decision affecting Alaska's natural resources and their uses.

12. Plaintiff KEN OWSICHEK has been an Alaskan resident for 22 years. He is a resident of Port Alsworth, Alaska, votes there, and makes his livelihood there. He has been involved in subsistence harvesting the renewable resources of Alaska for 22 years. He recently applied to the United States Park Service for a subsistence permit to harvest firewood, a renewable resource, in Lake Clark National Park and Preserve.

13. Plaintiff DALE E. BONDURANT has resided in Alaska since 1951, and has hunted and fished all of his life. He began as a young boy on a farm in Ohio, and has passed this tradition

from generation to generation. He lives on the Kenai Peninsula at Cooper Landing, a small community of 346 individuals spread out over a large area. The closest store is 25 miles away. Plaintiff BONDURANT has a deep respect and lifelong commitment to the protection, promotion, enjoyment and the use of Alaska's fish and wildlife, for all people. He and his family have eaten and enjoyed Alaska's fish and game for almost 40 years. They have always shared the animals or fish taken. It is a way of life for him and his family. He eats fish or game 3 or 4 times a week and as a direct result of ANILCA, can no longer participate in subsistence, no matter what his circumstances, on Federal lands.

14. Plaintiff WARREN OLSON has been a resident of the State of Alaska for more than 30 years. He is the past President of the Alaska Outdoor Council and has been a member of the Anchorage Advisory Board for Fish and Game. He was a member of the State Commission on Oversight of Federal Lands. He has fed his family of two children from fish and game harvested through subsistence. He lives in Anchorage and has participated in the harvest of renewable resources from nearly all areas on a personal basis. He has been denied hunting use permit of the Wrangell St. Elias Park area, and as a result of ANILCA, can no longer participate in subsistence harvesting of renewable resources in the State of Alaska on Federal lands.

15. Plaintiff HAROLD EASTWOOD has lived in Alaska for more than 30 years and is retired. Plaintiff EASTWOOD formerly

held a "permanent" subsistence permit issued by the Department of the Interior to subsist in his local area, McKinley Park, Alaska. McKinley Park has no services, no schools, no year-round grocery stores, restaurants or police, no libraries, no medical clinics, and no maintained roads. In order to receive a Federal subsistence permit, Plaintiff EASTWOOD had to prove customary and traditional use. Plaintiff EASTWOOD lost his permit when the State of Alaska declared the area non-rural and the Department of the Interior accepted the State of Alaska's definition.

16. Plaintiff MATANUSKA VALLEY SPORTSMEN represents more than 100 members. It is one of the oldest sport organizations in the State of Alaska and a charter organizing organization of the Alaska Fish and Wildlife Federation and Outdoor Council, Inc.. The MATANUSKA VALLEY SPORTSMEN and its members are dedicated to protecting the sustained yield principle in order to support recreational activities such as hunting, fishing and trapping.

17. Plaintiff MUSKEG MUZZLELOADERS CLUB represents approximately 60 members dedicated to the perpetuation of black powder muzzleloaders for hunting and target shooting. Plaintiff MUSKEG MUZZLELOADERS CLUB and its members are dedicated to conserving the renewable resources in order to ensure that all Alaskans have an opportunity to participate in hunting.

18. Plaintiff ALASKA BOWHUNTERS represents over 1,000 sustaining and regular members, including rural Alaskans. The

Plaintiff ALASKA BOWHUNTERS is dedicated to fostering and perpetuating the fair chase hunting with bow and arrow and is the only sport hunting group which represents sport hunting in Alaska. The ALASKA BOWHUNTERS and its members are dedicated to the conservation of the renewable natural resources in order to ensure that there are sufficient resources available for all Alaskans.

19. Plaintiff JIM REARDON, is a conservationist. He is a wildlife biologist who has resided in the State of Alaska for 40 years. Plaintiff REARDON's wife is a member of Bristol Bay Native Corporation. He and his wife have fed their family of 8 children on Alaska's fish and game taken for subsistence. He is dedicated to the good scientific sound management of Alaska's renewable resources. Plaintiff REARDON was on the Alaska Board of Fish and Game and the Game Board for 12 years and organized the Department of Wildlife Management at the University of Alaska where he taught for four years. He is a recognized outdoor editor and contributor to several outdoor magazines.

20. Plaintiff RUSS REDICK has been a resident of Alaska for more than 25 years. He is a wildlife biologist who is the former South Central Director of the Alaska Division of Fish and Game and has been dedicated throughout his entire life to the preservation and conservation of renewable resources, in particular, fish and game. He has participated in subsistence harvesting of Alaska's resources for most of his 25 years in Alaska.

21. Plaintiff LOREN CROXTON has been a resident of the State of Alaska for more than 30 years, is a game biologist, and the former Game Division Director of the Alaska Department of Fish and Game. Plaintiff CROXTON has participated with his family in the harvest of renewable resources in Alaska.

22. Plaintiff LOUIE BRUNNER is the past President of Safari Club Alaska Chapter and past Commander at Galena Air Force Base. Plaintiff BRUNNER has participated in the harvest of renewable resources from nearly all areas in Alaska and is dedicated to the conservation of renewable resources. He has participated in numerous out-of-door clinics and is dedicated to the principle of the conservation of Alaska's wild renewable resources.

23. Plaintiff, ALASKA PROFESSIONAL SPORTSMENS ASSOCIATION is a Statewide professional organization which developed out of the Alaska Outfitters Association in 1989. Plaintiff Alaska Professional Sportsmens Association has a professional membership of over 200 and a supporting membership of over 1,500 members, including rural Alaskans. The main objective of ALASKA PROFESSIONAL SPORTSMENS ASSOCIATION is to support and advocate equal and open access for sportsmen and women to all public lands within the State of Alaska be they Federal or State. Specifically, the ALASKA PROFESSIONAL SPORTSMENS ASSOCIATION supports the wise use of natural renewable resources consistent with the sustained yield principles found in the Alaska State

Constitution. It is a broad based membership association representing not only professional guides and outfitters, but Alaskan sportsmen, air taxi operators, and boat transporters, fishing guides, lodges, equipment providers, meat processors and any persons who use the resources for recreation or make their living in professional outdoor sports. The ALASKA PROFESSIONAL SPORTSMENS ASSOCIATION supports the concept of the common use of all fish and wildlife and waters in the State of Alaska and believes in the principles of sustained use. It supports the concept that allocations of limited resources must be based on scientific principles and not economic or socio-political goals.

24. Plaintiff STERLING EIDE is a retired resident of the State of Alaska, having lived in Alaska for more than 20 years. He is a wildlife biologist and was the former regional supervisor for the South Central and the South Eastern division of the Alaska Department of Fish and Game. He has devoted his life to the conservation, protection, and enhancement of wildlife habitat. He and his family have participated in the harvest of Alaska's wild renewable resources.

25. Plaintiff ALASKA GUN COLLECTORS CLUB is a non-profit corporation, incorporated in Alaska in 1978, comprised of over 300 members who use the outdoors and the renewable resources of Alaska. It fosters and encourages the collection, study and protection of the right to use firearms and a significant number of its members use those firearms in harvesting the renewable

resources of Alaska on Federal lands. Many of the members are rural residents and many of its rural and non-rural members participate in subsistence activities.

ACTS OF THE DEFENDANTS

26. In 1980, the defendant UNITED STATES OF AMERICA enacted the Alaska National Interest Lands Conservation Act (Public Law 96-487, December 2, 1980, 94 Stat. 2376 (hereinafter referred to as ANILCA) and in particular passed Title VIII which created two classes of United States citizens, "rural" Alaskan residents and all other citizens of the United States. The defendants DEPARTMENT OF INTERIOR and MANUAL J. LUJAN have proposed interim regulations enforcing ANILCA which are proposed to become effective July 1, 1990.

ANILCA IMPROPERLY DISCRIMINATES AMONG CITIZENS

27. ANILCA creates a preference for the use of Federal public lands for non wasteful subsistence uses and requires those uses be accorded a priority over the taking of all fish and wildlife on those lands. ANILCA defines subsistence uses in terms of residency, namely, limiting it to rural Alaska residents, thereby depriving all other United States citizens of the right to participate in subsistence harvesting on Federal lands in Alaska, and giving priority to rural Alaskan residents for subsistence harvesting over any other use of the Federal lands. It is a fundamental right of all citizens to subsist on fish and wildlife resources. The allocation of the right to participate in

subsistence activities and harvest on Federal lands is limited to persons based on where they live, and specifically not on their need or dependence on the resource. This priority exists even when there is an abundance of fish and wildlife available for harvest.

28. Scientific studies have demonstrated that rural subsistence users are heavily dependent on a cash economy because the cost of subsistence activities largely depends on equipment and the amount of gasoline needed to reach various harvest areas. Most harvest activities are conducted from snow machines and outboard motor boats, expensive to purchase and maintain. Consequently, studies by the State of Alaska demonstrate that each rural individual's harvest activities reflect that individual's access to cash. (Final finding and decision of the director and ACMP consistency determination regarding oil and gas lease sale 50, Camden Bay, State of Alaska Department of Natural Resources, April 30, 1987, page 26-27). In addition, other studies demonstrate that rural subsistence users engage in the majority of their subsistence activities on the weekends and after work, or during vacation or leave time.

29. ANILCA Title VIII, passed by the United States Congress in 1980, created a special class of persons, namely rural Alaskan residents, entitled to take fish and game on Federal lands on a preferential basis, regardless of need or dependency. The creation of a subsistence priority and preference which depends

totally on domicile in a rural Alaska area violates the plaintiffs' Constitutional rights by creating a public law which operates unequally on all persons in like circumstances and by creating what is in essence a private law protecting a class of individuals in a way in which the same rights of other persons are not protected, in direct violation of the Fifth Amendment of the United States Constitution. Under the Fifth Amendment of the United States Constitution, not only must a statute embrace all persons in a like situation, but the classifications must be natural and reasonable, not arbitrary and capricious. The guarantees of the Fifth Amendment of the United States Constitution are violated by a statute which embodies a classification which is not based on some real and substantial distinction.

30. In addition, the classification created by ANILCA serves to penalize the exercise of each Plaintiff's fundamental right to move from one area of Alaska to another, and from rural Alaska to other states, by denying those choosing to leave a rural area the continued enjoyment of the use of the Federal public lands for subsistence harvesting activities.

31. With respect to the individual Plaintiffs, ANILCA violates their Constitutional right to due process of law guaranteed to them by the Fifth Amendment of the United States Constitution in that it treats people unequally by allocating fish, wildlife and other renewable resources solely on the basis

of rural Alaska residence and not based on any type of need. The individual plaintiffs are denied subsistence rights on Federal land because they are not in the favored class. That is an improper criterion for the granting of fishing and hunting priorities on Federal lands.

32. ANILCA, Title VIII, violates the Constitutional rights of some of the members of the organizational Plaintiffs because it serves to penalize the exercise of those rural residents' rights to move from one area to another within these United States, thus unduly burdening their Constitutional right to travel freely throughout these Unites States.

ANILCA VIOLATES THE DUE PROCESS GUARANTEES OF THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION IN THAT VARIOUS TERMS WITHIN ANILCA ARE UNCONSTITUTIONALLY VAGUE AND THEREFORE VOID FOR VAGUENESS

33. Each of the individual Plaintiffs and the members of the organizational Plaintiffs are subject to criminal penalties for participating in subsistence harvests of non-renewable resources, including but not limited to, fish and wildlife on Federal lands. Title VIII of ANILCA is unconstitutionally vague in several aspects. The following terms are void for vagueness, "subsistence", "customary and traditional", "continued viability of all wild renewable resources in Alaska", "barter", "customary trade" and the term "rural".

34. It is a general principle of statutory law that a statute must be definite to be valid. ANILCA is so vague as to

violate the due process clause of the Fifth Amendment of the United States Constitution, because its language does not convey sufficiently definite warning with respect to what is prohibited, and its language is such that men and women of common intelligence must necessarily guess as to its meaning as demonstrated by the numerous court decisions since ANILCA was passed. Because it is so vague, it is impossible for a person exercising ordinary common sense to sufficiently understand it and comply with it in order to avoid criminal penalties.

PASSAGE OF TITLE VIII OF ANILCA VIOLATED THE STATEHOOD ACT,
THE EQUAL FOOTING DOCTRINE AND THE ELEVENTH AMENDMENT
OF THE UNITED STATES CONSTITUTION

35. The Alaska Statehood Act, PL 85-508 (72 Stat. 339) became effective on July 7, 1958, and proclaimed the State of Alaska to be a State of the United States, admitted into the union on an "equal footing with the other states in all respects whatever". The Alaska Constitution was approved by Congress on July 7, 1958 (72 Stat. 339) and was accepted, ratified and confirmed by the people of Alaska in an election held April 24, 1956. The Alaska Constitution, which was approved by the United States Congress, included Article Eight, §§ 2, 3, 4, 16 and 17, which specifically guaranteed to the people of the State of Alaska the common use of the renewable natural resources and prohibits the State Government from granting exclusive rights in any of the renewable natural resources to any one group of people. Title VIII of ANILCA forces the State of Alaska into violating its own

State Constitution, a State Constitution which was specifically approved by the United States Congress in 1956, by threatening Federal takeover of subsistence uses on Federal lands if the State does not create an exclusive priority to the fish and game of the State of Alaska for persons based solely on their residency. In fact, in hearings before the Alaska State legislature in 1986, the Defendant Department of Interior, through Undersecretary William Horn, specifically threatened the Alaska State legislature with a takeover of fish and game management if they did not pass legislation specifically granting exclusive hunting and fishing rights to people based solely on where they lived. Undersecretary Bill Horn testified that the Alaska State legislature was not permitted to grant a subsistence priority on the basis of direct dependence or need. He also stated that the Department of Interior recognized that this would mean that the State would be required to provide subsistence priorities to people who in fact did not depend on the resource, and at the same time deny access to those who in fact did depend on access to the resource.

36. On December 22, 1989, the Alaska State Supreme Court in McDowell v. State of Alaska, 785 P.2d 1 (Alaska 1989), ruled that the Alaska 1986 subsistence law was unconstitutional as violating several provisions of the Alaska State Constitution, namely Article VIII, §§ 3, 15, and 17. The United States Department of Interior has now proposed interim regulations to take over subsistence regulation on Federal lands. This

threatened takeover of subsistence on Federal lands directly affects all of the plaintiffs, both individual and organizational.

37. Section 807 of ANILCA, which grants aggrieved rural subsistence users the right to directly sue the State of Alaska in Federal District Court, violates the Eleventh Amendment of the United States Constitution, the Statehood Act, and the Equal Footing Doctrine. It directly affects each Plaintiff organization and those individual Plaintiffs directly involved in or concerned about the protection and conservation of fish, wildlife and other non-renewable resources because this provision (§ 807 of ANILCA) directly interferes with overall fish and wildlife management plans designed to protect and conserve particular wildlife, and, possibly, fish populations. Most recently, in Kwethluk IRA Counsel v. State of Alaska, A90-107 (U.S. D.C. Alaska), the Federal District Court issued a preliminary injunction specifically overruling the Alaska Board of Fish and Game and directing the State of Alaska to allow the Kwethluk people to hunt immediately and to issue them 50 special caribou permits to hunt a particular caribou herd, namely the Killbuck herd. Judge Holland ruled in the preliminary injunction that the Board's attempt to ban hunting of the Killbuck herd on the basis of the "sustained yield" principle found in the Alaska State Constitution was arbitrary and capricious because the words "sustained yield" were vague and subject to arbitrary and capricious definitions. That decision demonstrates that every decision of the Alaska Fish

Boards and Game Boards made on the basis of a sustained yield principle (a biological principle) is subject to attack and injunctive relief by aggrieved subsistence users. In essence, every fish and game management decision which is based on a biological decision is subject to a reversal by the U.S. District Court of Alaska.

38. The case, itself, involved few animals. It was filed after the Board of Game in March, 1990, rejected an emergency petition from Kwethluk for an immediate, limited subsistence hunt of the Killbuck Mountain caribou herd. All hunting of the Killbuck herd had been suspended since 1985, because the herd had decreased to less than 100 animals. Based on the information before it, the Board of Game found that all hunting should remain suspended in order that the herd might further increase. Significantly, the Association of Village Council Presidents (Kwethluk is a member) had recently passed a resolution in favor of keeping the closure in effect for several more years rather than opening it up in 1990. The U.S. Fish and Wildlife representative agreed with the Board's decision. The Board of Game also found that another caribou herd (the Mulchatna herd) was close enough to meet the subsistence needs of the Kwethluk people, and the Kwethluk people had previously identified the herd as a traditional hunting area. Now, the Kwethluk people asserted that it was less convenient. The Motion for Preliminary Injunction was filed on March 30, 1990. Judge Holland overruled

the Board and issued a preliminary injunction on April 4, 1990, directing the State of Alaska to allow the Kwethluk people to hunt immediately and to issue them 50 special caribou permits to hunt the Killbuck herd. This case clearly demonstrates that with Federal Court direct intervention in management decisions, there is no longer any overall management of the game populations in the State of Alaska on Federal lands. Since game animals migrate from one land to another, this decision also impacts on the State game populations that may migrate onto Federal lands. Such case by case decisions directly and adversely impact on fish and game populations in the State of Alaska. These decisions specifically hurt the Plaintiff organizations and individual Plaintiffs who are directly involved or concerned with the protection and conservation of the fish and wildlife resources in the State of Alaska.

CLAIMS SPECIFIC TO THE ISAAC WALTON LEAGUE, THE ALASKA WATERFOWL ASSOCIATION, THE ALASKA FISH AND WILDLIFE FEDERATION AND OUTDOOR COUNCIL AND THE ALASKA FISH AND WILDLIFE CONSERVATION FUND

39. The common purpose of the Plaintiffs, ISAAC WALTON LEAGUE, THE ALASKA WATERFOWL ASSOCIATION, THE ALASKA FISH AND WILDLIFE FEDERATION AND OUTDOOR COUNCIL AND THE ALASKA FISH AND WILDLIFE CONSERVATION FUND, is to perpetuate the natural renewable resource base that allows the sustained activities of its member groups and individuals. In particular, each of these Plaintiffs promote fish and wildlife conservation and scientific fish and wildlife management practices. The Plaintiff ALASKA WATERFOWL

ASSOCIATION's primary concern is for waterfowl management and the management of waterfowl habitat with an emphasis on the conservation of waterfowl. The Plaintiff ISAAC WALTON LEAGUE is the nation's oldest conservation organization and is specifically concerned about the conservation of fish and wildlife and waterfowl as well as other renewable resources.

40. Great Britain (acting on behalf of Canada) entered into the Convention for the Protection of Migratory Birds in 1916. This Convention applies to the taking of migratory waterfowl on Federal lands. (39 Stat. 1702 (1916)) Likewise, the Migratory Bird Treaty Act applies to the taking of migratory waterfowl in the State of Alaska on Federal Lands. Section 807 of ANILCA, as applied, contravenes the Convention and the Treaty Act, because of the fact that any aggrieved subsistence user can, pursuant to § 807 of ANILCA, immediately go to the Federal District Court, and possibly receive a preliminary injunction, the overall wildlife management plans of either the State of Alaska or the Federal Government, with respect to the protection of migratory waterfowl, are in jeopardy. The Plaintiff organizations and its members are harmed by the implications of § 807 because the members use these Federal lands and participate in and support the conservation of waterfowl and waterfowl habitat.

CERTAIN INDIVIDUAL PLAINTIFFS ARE ENTITLED TO ADMINISTRATIVE RELIEF PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT

41. Plaintiff KEN OWSICHEK, SAM McDOWELL, WARREN OLSON,

DALE BONDURANT, MARGARET CLUM, JOHN ALSWORTH AND HAROLD EASTWOOD have all either been denied a Federal permit for subsistence uses by the DEPARTMENT OF INTERIOR or the National Park Service, a part of the DEPARTMENT OF INTERIOR. Plaintiff HAROLD EASTWOOD had a "permanent" Federal Subsistence Permit to use in McKinley National Park for subsistence purposes. The National Park Service revoked his permit when the State of Alaska determined the area to be non-rural. Plaintiff KEN OWSICHEK was turned down for a subsistence use permit on May 31, 1990, on the basis that he was not a rural resident. Plaintiffs SAM McDOWELL, DALE BONDURANT and WARREN OLSON have all been rejected for subsistence use permits by the Park Service. Plaintiff MARGARET CLUM has been denied the right to subsistence activities on the 80 acres of Native Allotment land which she owns in the Lake Clark National Park. Each of these Plaintiffs should have been granted the requested permits.

THE EFFECT OF ANILCA IS TO FORCE THE STATE OF ALASKA
TO ABRIDGE THE PRIVILEGES & IMMUNITIES CLAUSE

42. Article IV, § 2, the Comity Clause, of the United States Constitution, provides that citizens of each state are entitled to all the Privileges and Immunities of the citizens in the several states. No state may discriminate in favor of its own citizens where the discrimination concerns an essential activity or basic right. ANILCA forces the State of Alaska to violate this important constitutional provision by forcing it to adopt a subsistence law which divides people into two arbitrary groups,

the rural Alaskan subsistence user and all other subsistence users. Only those subsistence users who lived in an area in Alaska identified as "rural" would continue to be able to engage in the essential and basic activity of subsisting.

43. While the Alaska Supreme Court struck down the 1986 State subsistence law in the McDowell decision, the State of Alaska Legislature is presently going into special session to consider either a change to the State Constitution or another state law which would discriminate against the Plaintiff MARY ALSWORTH, an Alaskan Native, a member of the Bristol Bay Native Corporation, by again limiting subsistence uses to rural Alaskans on state land or private land. MARY ALSWORTH is a resident of the State of Hawaii and still owns property in rural Alaska, yet she would be denied the right to subsist on her own property.

WHEREFORE, the Plaintiffs request that this court:

1. Declare the Title VIII of the Alaska National Interest Lands Conservation Act of 1980 unconstitutional and therefore invalid;
2. Declare that any discrimination among subsistence users based on domicile alone be declared unconstitutional;
3. Declare that the provisions of Title VIII of Alaska National Interest Lands Conservation Act are unconstitutionally vague and violate the Due Process clause of the United States Constitution;
4. Grant the Plaintiffs appropriate injunctive relief

against the enforcement of Title VIII of ANILCA;

5. Order the issuance of the various permits referred to in this Complaint;

6. Grant the Plaintiffs their full costs and attorneys fees for maintaining this public interest litigation; and

7. Grant the Plaintiffs such other and further relief as the court deems proper.

DATED at Anchorage, Alaska this 22nd day of June, 1990.

ROSS, GINGRAS, BAILEY & MINER
A Professional Corporation

BY: Cheri C. Jacobus
CHERI C. JACOBUS
Attorneys for Plaintiffs

Bettye - Please distribute
Bert - Please distribute

April 10, 1990

MEMORANDUM

TO: Interior Delegation

c/o Bert Sharp

FROM: Samantha Castle
Chair, Board of Game

RE: Wildlife legislation

I just spent over three weeks dealing with wildlife issues in this state, over 450 proposals. Thousands of state dollars were spent flying advisory committees into Anchorage and thousands of personal dollars were spent by affected users who are not members of advisory committees. I believe wildlife issues are fully discussed. Hours of wrangling, compromising, agonizing debate usually occur. I think the Board of Fish and Game members do an excellent job, especially when you consider that we do it out of concern for the resource and the allocation process for affected people. Obviously we do not do it for money. This past month cost me several thousand dollars in loss of income and actual per diem expenses.

Also obvious to me is that I should have spent the time and money on vacation in Mexico. Everyone is a biologist lately. Federal court judges and legislators know a hell of a lot more than professionals and lay people who really care about each of the issues you make decisions on.

I've heard from one of you this session. Bert Sharp called about the bill which would increase reimbursement amounts for Board members. As to wildlife questions or background, not a word. In your collective wisdoms, though, I see that the moose farming bill, bear baiting bill, aviculture bill and goat bill are well on their way to becoming law.

You may not do any great resource harm by passing these bills, probably. But I tell you that the spectre of seeing a moose chained to a gas pump to attract people to buy gasoline is totally repulsive to me. I just saw a moose who is too weak to move from the Willow grocery store porch, surrounded by hay which has no nutritional value to moose, and a sign out front which advertises "moose rides, \$2.00". I am sickened by people degrading moose in that way. I am furious that you would spend your valuable time writing a statute specifically for one person who may have the financial resources to engage in such a scheme and two who don't. How in the hell are you going to get the "right" moose into an orphanage or off the railway tracks. The whole concept is too

bizarre and expensive to even seriously consider. This is obviously another example of zealots having access to the Legislature but the rest of us common, average folk who have great faith that you will make wise, statesmen-like choices, being too quiet and trusting. Maybe I have followed Bettye's campaign too closely.

By the way, a couple of years ago you passed an elk bill for Mr. Columbo. He hasn't raised those yet, either. No one has even applied for a permit. What has this guy got on you all? Certainly not overwhelming public sentiment.

Bear baiting -- I will tell you again. There is no biological reason for you to consider a statewide ban. The Board of Game has written regulations twice in the past two years to restrict this activity in places where it is inappropriate. Frankly, I'm very tired of the issue, so go for it. I don't like baiting either, but I could not in good conscience and fair dealing, restrict an activity that is entirely emotional in its' arguments. Bear baiting is a good management tool and part of a long term management program. It is not a casual or random activity. We have more black bears than ever before, so obviously the plan has been working. If your considerations are on the ethics of the activity, I suggest you spend your time on ethics dealing with the package before you for your Legislative members. That's probably more important and will affect more Alaskans.

Aviculture -- now we are down to two affected users. These people want to sell their progeny. Hundreds of people have disagreed with them over a five year period. But don't let that stop you. Maybe we can put pen reared ptarmigan next to the moose chained to the gas pump.

If I sound bitter about commercialization of wildlife, I am. I have travelled all over the world and witnessed reptile farms and other game ranches fail. I have talked with owners of these facilities and professionals who have had to clean up the messes after a few years of wildlife in private ownership. After the novelty wears off or the dollars run out, it becomes a state problem. Even in Texas and Africa, they are deciding there is a better way. Why do we have to reinvent the wheel in Alaska?

The goat bill. The Board of Game has an unwritten rule about writing the same regulations year after year in a seesaw manner. We just don't do it. We try to give a regulation a couple or more years to work to see if the rationale was correct. Last session, you decided a guide was required. This year, you will probably decide that it isn't. By the way, the Legislature spent hundreds of thousands of dollars on the guide task force which presented last year's bill. Mr. Duncan is responding to one or two constituents who had ample opportunity to respond in public testimony last year.

Do I sound discouraged and somewhat cynical? Yes, I

believe you have capable bodies to work on wildlife issues. Apparently you choose to write garbage bear bills, cow moose bills, bear baiting bills and dabbling in other ways and obviously you do not care to ask those of us who spend most of our days and nights dealing with these same issues. Am I offended that one or two people can by-pass the system and get legislation through you after they have been turned down in the normal process. Of course!

I have asked the Division of Boards staff to deliver to each of you a copy of the proposal book for this year. You are welcome to work on those issues as well as these you are dabbling in. I think I will go to Mexico.